

**BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

In the Matter of:)	
)	
PROPPANT SPECIALISTS, LLC,)	
)	
)	
Employer,)	
)	
and)	Case 30-RC-6783
)	
INTERNATIONAL UNION OF)	
OPERATING ENGINEERS,)	
LOCAL 139, AFL-CIO,)	
)	
Petitioner.)	

The above entitled matter came on for hearing pursuant to notice, before Andrew S. Gollin, Hearing Officer, in the Council Chambers of the Tomah Municipal Center, Second Floor, 819 Superior Avenue, Tomah, Wisconsin, on Tuesday, August 30, 2011, at 10:11 a.m.

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1 it is the obligation of counsel to inform potential witnesses
2 of their obligations under the order. It is also recommended
3 that, as witnesses leave the witness stand -- the stand upon --
4 when they leave the witness stand upon completion of their
5 testimony, they be reminded that they are not to discuss their
6 testimony with any other witness until the hearing is
7 completed.

8 So I will ask the parties to identify, by name, their
9 designee. I will start with the Petitioner.

10 MR. FIORETTO: The Union will designate Local 139 business
11 representative/organizer Al Fogel.

12 HEARING OFFICER GOLLIN: All right. The Employer?

13 MR. ANDREWS: The Employer designates plant manager Wayne
14 Dailey.

15 HEARING OFFICER GOLLIN: All right. So please make sure
16 that you notify all of the potential witnesses. And when I say
17 "potential," I mean people who you know you are going to call
18 and people who you may, depending on what transpires over the
19 next day or so, as potential witnesses, that they are not to
20 discuss the matter with each other, with the exception of the
21 caveat that I described.

22 Any other outstanding preliminary matters that I need to
23 discuss?

24 MR. ANDREWS: Not on behalf of the Union.

25 HEARING OFFICER GOLLIN: Okay.

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1 a report, put it in the computer, and then that sieve analysis
2 goes with the truck to the rail. And then when we fill a rail
3 car, we take all that analysis -- and that is what our analysis
4 of that car is -- to the customer. So that lab person does the
5 sampling as well as the reporting.

6 Q Does the lab person do anything else?

7 A They can go out in the plant and take shift samples to
8 help out in the plant. They also take -- if we bring in other
9 outside sources of and, they run tests there and they can run a
10 wash test on it, a total gradation of the sand, and they can
11 run crush tests.

12 Q Who actually loads the trucks?

13 A The lab person does.

14 Q So --

15 A The lab/loadout.

16 Q -- so the lab person also loads the truck?

17 A Yes.

18 Q And how do they accomplish that?

19 A Well, the truck comes in, they get a tare weight. They go
20 out, spot the truck, and they have a hydraulic actuator, where
21 they push the button, the sand falls out into the truck, they
22 cut their sample, and then they move the truck up and get
23 another sample, bring that sample in, and then that's how they
24 test it.

25 Q What do you mean when you say "cut" the sample?

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1 A Just pass a sample cutter underneath that stream to get a
2 small sample of the material.

3 Q And then what do you do with that sample? What does the
4 lab person do?

5 A It's brought into the lab. They split it down to the size
6 they need for the lab, they weigh it, usually between 100 and
7 150 grams. They pour it into a stack of sieves that have the
8 different -- the 20, the 40, the 50, the 60, the 70 mesh. And
9 then they run the analysis. They shake it for 10 to 15
10 minutes, take that, and then take each of those sieves and
11 weigh what's on them, and calculate the gradation of that
12 product. And so, like a product that's 20-40, it needs to be
13 90 percent between 20 mesh and 40 mesh. That is the
14 specification for a customer.

15 Q And when you say the lab technician shakes it for 20
16 minutes, are they standing there shaking it or how do they do
17 that?

18 A No, they have a lab device, a sifter.

19 Q Okay. You have described the function of both the wet
20 side of -- the wet plant and the dry plant. Could you describe
21 the physical layout of the Oakdale facility for us?

22 A We have a stockpile area where the raw material comes in.
23 Then you have the layout of the feed hopper and the hydrosizer,
24 which is where we make the classification of the sand sizes,
25 and then the de-watering system. And then on each side of it

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1 Q Are you present during the night shift?

2 A No.

3 Q Who, during the months of April, May, June of 2011 was
4 present as a representative of management on the night shift?

5 A Barrett Oliver.

6 Q Was he the only representative of management on the night
7 shift?

8 MR. FIORETTO: I am going to just raise an objection at
9 this point, in terms of categorizing Barrett Oliver as manager.

10 THE WITNESS: Supervisor.

11 HEARING OFFICER GOLLIN: Does he have a title that he is -
12 -

13 THE WITNESS: It is listed as shift supervisor.

14 HEARING OFFICER GOLLIN: Okay, all right.

15 THE WITNESS: But --

16 HEARING OFFICER GOLLIN: As you know, the titles that they
17 give to them are not going to play --

18 MR. FIORETTO: Right.

19 HEARING OFFICER GOLLIN: -- the most complete role in
20 deciding what they actually are.

21 So you can go ahead.

22 MR. ANDREWS: All right.

23 Q BY MR. ANDREWS: Before the objection, I was asking you
24 who was present on the day shift in addition to Todd Rainey --
25 and who is that, in terms of management authority?

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- 1 A The plant manager is the one that makes the decisions.
- 2 Q And who is that?
- 3 A Myself, Wayne Dailey.
- 4 Q And on the night shift -- are you present on the night
- 5 shift?
- 6 A No, I am not.
- 7 Q And between the months of April, May, June of 2011, who
- 8 was your person that you designated to make the decisions on
- 9 the night shift?
- 10 A Barrett Oliver.
- 11 Q Was anyone else present on the night shift who you had
- 12 designated to make any decisions as to management authority of
- 13 any sort?
- 14 A Not at this time that I remember, no, he was the one when
- 15 he was here.
- 16 Q What authority did you give Barrett Oliver for the night
- 17 shift?
- 18 A His responsibility is to keep the operations running. He
- 19 makes the decision if the plant had to be shut down and nobody
- 20 needed to be there, he could let the people go. If some piece
- 21 was broke down, he needed a mechanic, he would call out Harry
- 22 to get help.
- 23 Q I am sorry, you said "Harry"?
- 24 A Harry Burdett, I am sorry.
- 25 MR. FIORETTO: I am sorry, may I just ask if you can

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1 please just speak a little slowly so I can take notes as you
2 are testifying? I'm sorry.

3 THE WITNESS: Yes.

4 MR. ANDREWS: Please do, slow down just a little bit.

5 THE WITNESS: He would call out the maintenance man on his
6 own, if he has a problem.

7 Q BY MR. ANDREWS: And when you said "he," who are you
8 referring to?

9 A Barrett Oliver would.

10 Q Would Barrett Oliver have to call you first to check to
11 see if that was all right?

12 A Generally, no, he would not call me. I have gotten a few
13 calls from him over the period of time.

14 Q And what would the nature of those calls have been?

15 A Not knowing if "I should just leave it down until morning
16 because I can't find any parts or we can't get it fixed," that
17 type of thing. What should we do, maybe, if -- you know, if we
18 can't do it, you know, he said "Well, I was going to let the
19 people go home," I said, "Yeah, go ahead, that's no problem,
20 you can do that." But I would say he had only called me two or
21 three times in the three, four months.

22 Q So, otherwise, when would you learn that he had, perhaps,
23 sent employees home? When would you learn of that?

24 A In the morning, when I got there.

25 Q And Barrett Oliver had made that decision independent of

1 consultation with you.

2 A Yes, that is what we would expect him to do.

3 Q What, if any, discipline needed to be given or -- based on

4 work that was performed on the night shift?

5 A Generally, he would pass it along to Todd if there was a

6 problem --

7 Q And what would Todd --

8 A -- because Todd was always there right at 6.

9 Q And what would Todd do then?

10 A Pass it along to me.

11 Q Now after the NLRB election took place in June, was there

12 a time when Barrett Oliver and you had lunch together?

13 A Actually, I had breakfast with him. They called me up --

14 Q When you say "they," who is "they"?

15 A -- Barrett Oliver and Jeff -- forgot the last name -- Jeff

16 --

17 Q Another employee?

18 A Yeah -- what's his last name --

19 Q Sobczak?

20 A Yes -- I can't pronounce his last name.

21 Q All right.

22 A But anyway, he -- they had called me one day and said,

23 "Well, could we go out for breakfast?" And they had done it

24 another time, and we just talked about some things that were

25 going on and stuff, and they had -- they said, "Well, we're

1 THE REPORTER: Yes.

2 (WITNESS SWORN: HAROLD BURDETT.)

3 HEARING OFFICER GOLLIN: Please be seated, and state and
4 spell your name for the record.

5 THE WITNESS: My name is Harold Burdett.

6 HEARING OFFICER GOLLIN: Can you spell that for me,
7 please?

8 THE WITNESS: H-A-R-O-L-D B-U-R-D-E-T-T.

9 HEARING OFFICER GOLLIN: Go ahead.

10 DIRECT EXAMINATION

11 Q BY MR. ANDREWS: Mr. Burdett, who do you work for?

12 A Proppant Specialists.

13 Q How long have you worked for that company?

14 A Since March of this year.

15 Q And what is your position?

16 A I am in maintenance. I am the mechanic, the electrician,
17 the welder -- pretty much anything that involves maintenance.

18 Q Is there anyone else like you at that location?

19 A No, sir.

20 Q Are you familiar with an individual by the name of Barrett
21 Oliver?

22 A Yes.

23 Q And how do you know Barrett Oliver?

24 A Met him shortly after I went to work. I was introduced to
25 him because they -- the plant manager at the time told me that

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1 he was the night shift supervisor, and that, you know, I should
2 know him so we could work together.

3 Q Okay. In your work, how did the two of you communicate?
4 By what means did the two of you communicate?

5 A Generally, telephone, since he worked nights and I worked
6 days, so very seldom did we see each other.

7 Q And did you call Barrett or did Barrett call you, or how
8 did that work?

9 A He called me.

10 Q And what would Barrett call you about?

11 A Bearings going bad, they needed help changing, something
12 broke, basically.

13 Q Was Barrett always -- Barrett Oliver -- always the one who
14 contacted you about something that broke on the night shift?

15 A Yeah.

16 Q Would anyone else ever call you, from the time period of
17 April to mid-June of this year, regarding things that broke on
18 the night shift?

19 A Occasionally, if he happened to be on days off or
20 something, I would get a call from the plant, you know, from
21 the operators.

22 Q But only if he was on a day off?

23 A But -- yeah, generally --

24 MR. FIORETTO: I am going to raise an objection --

25 THE WITNESS: -- it was him that called me.

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1 MR. FIORETTO: -- I am going to raise an objection in
2 terms of foundation, how he is aware that these phone calls
3 took place when Mr. Oliver was not there.

4 Q BY MR. ANDREWS: How did you know that it was Mr. Oliver's
5 day off when these other calls would come in?

6 A I just assumed it, because he wasn't the one calling me,
7 because somebody else did.

8 Q Would you ask the employee, "Where's Barrett Oliver"?

9 A No. Generally my -- generally, I just went to see what
10 was wrong.

11 Q And would Barrett Oliver meet you then, on a day that he
12 was present?

13 A Sometimes, sometimes not. I don't know -- if he called
14 me, then yeah, generally -- I can think of maybe once that he
15 didn't actually, you know, show up for the -- where I was,
16 where I was supposed to go look at whatever the problem
17 happened to be.

18 Q And that would be once out of how many times?

19 A Oh, I don't know, probably a dozen, in that ballpark.

20 Q Now, you attended a pre-election conference, is that
21 right?

22 A Yes, sir.

23 Q And do you remember what day that was?

24 A Whatever day the election was, the first part of June --
25 no, I don't remember the exact date.

1 Q All right. Do you recall who was present at the pre-
2 election conference?

3 A Yeah, Mr. Fogel there, Chuck --

4 MR. FIORETTO: I am sorry, can you say that again?

5 THE WITNESS: Mr. Fogel -- Fogel -- the gentleman sitting
6 beside you.

7 MR. FIORETTO: Oh, Mr. Fogel, I am sorry.

8 THE WITNESS: Yeah. Chuck was there.

9 HEARING OFFICER GOLLIN: You are referring to Mr. Pautsch,
10 the --

11 THE WITNESS: Chuck Pautsch, Mr. --

12 HEARING OFFICER GOLLIN: -- attorney?

13 THE WITNESS: -- the other attorney, yes.

14 HEARING OFFICER GOLLIN: Okay.

15 THE WITNESS: Myself, Mr. Oliver, the gentleman from the
16 NLRB. And I know -- I don't think -- well, there was the other
17 fellow with you that's not here today -- Mark something or
18 other was the other Union representative there.

19 MR. FIORETTO: For the record, it is Mark Gauf.

20 THE WITNESS: Okay, yeah, I didn't remember his last name.

21 Q BY MR. ANDREWS: And do you recall what Barrett Oliver was
22 wearing at the pre-election conference?

23 A Yeah, a shirt that said "Local 139" or something on it.

24 Q Do you recall what the -- what was said at the pre-
25 election conference?

1 HEARING OFFICER GOLLIN: And I am sure Mr. Andrews is
2 going to lay the foundation for how do you know, and what do
3 you know, and if it becomes hearsay, or based on something that
4 he has no personal knowledge of, you can certainly assert your
5 objection at that point and I will make a ruling.

6 Q BY MR. ANDREWS: So go ahead with --

7 A Well --

8 Q -- continue with your answer.

9 A -- before -- it wasn't very long after I went to work. I
10 don't remember dates, it was probably in April some time.
11 There was a big shake-up between the manager that was there,
12 the company that owned the -- what would he be -- he was the
13 head guy of the Wisconsin division, more or less -- had put
14 somebody else in charge. And the two clashed, and it was just
15 a big -- it was a big mess. Anyway, the one guy got fired, the
16 acting -- or the manager at the time got fired --

17 Q Are you referring to the plant manager?

18 A John Rice, yes.

19 Q All right.

20 A He got fired that night over a whole bunch of -- I don't
21 know what, and I don't care to know. But during all that time,
22 you know, I went back to the house, and after we had determined
23 -- we got the dryer squared around and got it running right
24 again. I went back to the house and went back to bed. When I
25 got up the next morning, went to the shop to go to work, the

1 shop was locked. And the shop had never been locked since I
2 had been there. So, you know, I got on the phone, you know, or
3 tried to find somebody that had the keys or find out what the
4 hell was going on, Mr. Oliver came up and unlocked the shop for
5 me. So -- it made sense, he's the supervisor, he's got the
6 keys to my shop, which I didn't even have a key for. So I
7 figured well, yeah, he is the supervisor, he would have the
8 keys. So -- but as far as anything else, other than just
9 observing, you know, listening to what people say. And I, you
10 know, other than that, nobody actually came out and told me he
11 was a supervisor. Just other -- other than the first
12 introduction, when they introduced me as -- to him, and he was
13 the supervisor, so.

14 Q Did Barrett Oliver ever tell you he was the supervisor?

15 A No, I don't think the question ever came up. I don't
16 guess he ever felt like he had a reason to tell me, because we
17 were introduced that way.

18 Q All right. Now, on the day of the election, as you came
19 up to the farmhouse where the election was held --

20 A Yes.

21 Q -- at the front end of the property, did you notice
22 anything going on across the road from the farmhouse?

23 A Oh, yeah, there was big yellow banners over there, you
24 now, "Vote Yes," "Vote for the Union," "Vote Yes."

25 Q Did you notice any --

1 A They were up there actually -- oh, they were up there a
2 day before the election even, if I don't -- if I'm not
3 mistaken.

4 Q Were there any people present when you came to vote, any
5 people present where the signs were located?

6 A No, not when I went to vote, no.

7 Q Had you seen any people over there near the signs at any
8 point in the day?

9 MR. FIORETTO: I am sorry, on what day?

10 Q BY MR. ANDREWS: On the day of the election?

11 A On the day of the election, no, but there again I worked
12 all day, I was never up there, so I couldn't say one way or the
13 other whether there was anybody around there or not.

14 Q So at the time you went to vote, you didn't see any people
15 by the signs?

16 A I didn't see any people, no, but I'd already been -- you
17 know, I went early, you know, before all the rest of the
18 employees started coming for the election, because I had to go
19 early, because I was the observer.

20 Q Now, had there been any communication amongst the
21 employees, that you interacted with, regarding any potential
22 reduction in hours of work?

23 A Oh, yeah, everybody was concerned about it.

24 Q And then can you tell me what you heard, and who you heard
25 it from, and when you heard it?

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1 HEARING OFFICER GOLLIN: Well, it's entirely -- my
2 question is you are soliciting hearsay testimony from a non-
3 supervisory agent about non-supervisor employees or agents,
4 what they may have said to him. And so we have an issue of
5 being able to cross examine witnesses who allegedly talked to
6 him. So, you can talk to him about his concerns, if he had
7 any, the basis for them. But, I mean, as far as what employees
8 said to him, it is going to be hearsay.

9 MR. ANDREWS: Right, I understand, we are getting there.

10 HEARING OFFICER GOLLIN: Okay.

11 Q BY MR. ANDREWS: So, did any employees, or did you, at any
12 point in time, ever have a concern about the number of trucks
13 that could deliver to the location?

14 A I wondered about it, personally, because --

15 Q And why was that?

16 A Well, because if it's a union site, union plant, then
17 would anybody but Teamsters be able to drive in there, you
18 know. I didn't know how that operates. I worked on a couple
19 of union jobs and that's how they worked. But, you know, there
20 again, I kind of figured the hours, myself personally, the
21 hours were going to get cut.

22 Q And you based that solely on what?

23 A My -- just my observations over the years of working on a
24 whole bunch of different jobs.

25 Q And what did you see about what was happening at this

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1 A I saw it on the company bulletin boards in the wet plant
2 control room. I saw it on the company bulletin boards in the
3 dry plant control room.

4 Q And what time of day did you see it?

5 A Well, it was during day shift, somewhere 6 in the morning
6 until 6 in the afternoon. I was in and out of both places off
7 and on all day long, so it could have been at any given point
8 in the day.

9 MR. ANDREWS: I have no more questions for this witness.

10 HEARING OFFICER GOLLIN: All right. I have a couple
11 questions.

12 THE WITNESS: Sure.

13 HEARING OFFICER GOLLIN: You testified that during the
14 election, Mr. Oliver had a shirt on, and it said -- I think
15 your testimony was it said "Local 139" or something.

16 THE WITNESS: Something, something, yeah.

17 HEARING OFFICER GOLLIN: Okay. Can you describe the t-
18 shirt for me, in the sense of the size of the emblem or
19 whatever as far as the union material?

20 THE WITNESS: It was probably letters a couple inches
21 high.

22 HEARING OFFICER GOLLIN: Okay, where on the shirt was it?

23 THE WITNESS: Right on the front.

24 HEARING OFFICER GOLLIN: Okay.

25 THE WITNESS: Well, I mean, on the chest.

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1 HEARING OFFICER GOLLIN: On the chest?

2 THE WITNESS: Yes.

3 HEARING OFFICER GOLLIN: Is it across in the middle --

4 THE WITNESS: Yes.

5 HEARING OFFICER GOLLIN: -- on the right corner, left

6 corner?

7 THE WITNESS: No, it was all in the middle of the shirt.

8 HEARING OFFICER GOLLIN: Okay, and you think that the

9 lettering was about --

10 THE WITNESS: Approximately two inches.

11 HEARING OFFICER GOLLIN: Okay, and it had the word "Local

12 139" words?

13 THE WITNESS: I believe that is exactly what it said.

14 HEARING OFFICER GOLLIN: Okay, was there anything else, a

15 hat, pins?

16 THE WITNESS: I -- he might have been wearing a hat that

17 day, a hat with the Local number on it, too, I don't remember

18 that.

19 HEARING OFFICER GOLLIN: Local 139?

20 THE WITNESS: Yeah.

21 HEARING OFFICER GOLLIN: Okay.

22 THE WITNESS: But I don't remember whether he had a hat on

23 that day or not.

24 HEARING OFFICER GOLLIN: Anything else? Any other

25 messages on his shirt or hat?

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1 was Barrett Oliver at the time. We would just discuss
2 different things of what they needed to do if there was -- if
3 the plant was broke down, what they needed to do to continue on
4 from the day shift, what they were working on, or if there was
5 issues going on in the lab. If there was a product that was
6 bad, that we had a bad product in the silos for the
7 lab/loadout, I talked to the night shift group in the
8 lab/loadout. And we would just -- we would discuss everything
9 with issues like that. And then Barrett was there, and he
10 would give his direction. If there was a list of stuff that
11 needed to be done, he would have that list made up, and that he
12 would direct people where they needed to go and what they
13 needed to do at the -- you know, for the night shift.

14 Q Now, was there ever a time -- you mentioned someone by the
15 name of Sandy -- what is Sandy's last name?

16 A Just call me goofy -- Haskins? I am pretty sure Haskins.

17 Q Okay, Sandy Haskins. And she worked on your crew? She
18 was a lab person?

19 A She's a lab person, personnel, yup, she's on the night
20 shift.

21 Q Okay. And was there ever a situation where there was a
22 question about the quality control on a load that she was
23 involved in?

24 A Yes, there was.

25 Q And can you describe that for us?

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1 A Yes. What would take place is -- I was in the lead, so
2 they were directed, if I was not available or at the plant,
3 they were asked to call me if there was a load that would go
4 out or was tested and it would be low grade, which our grade
5 was anything 90 percent or lower, that they were to contact me
6 and that I would either call Wayne Dailey or my other
7 supervisor, which is -- above supervisor, which is Dae
8 Locklear. And we would discuss it, and whether we would send
9 it to rail yard or we would dump it back on property, like I
10 had stated earlier. On several occasions, I would come in and
11 I would notice that I -- we do a composite. When we send the
12 sand to the rail yard, in each particular railcar you send four
13 loads -- truck semi loads -- per railcar. And they got to do a
14 composite on that. Well, when I would come in in the mornings
15 I would look at them composites and see that there was a low
16 grade on certain ones, and I would ask Sandy, directly, "I was
17 not called, why wasn't I called?" And her comments to me was -
18 -

19 MR. FIORETTO: Objection, hearsay.

20 MR. ANDREWS: We have a foundation, we have time, place,
21 who is involved, what she said to her, and what was said --

22 MR. FIORETTO: Right, what is the exception to the hearsay
23 rule? That is classic hearsay, so what is the exception?

24 HEARING OFFICER GOLLIN: Okay, you are talking to her
25 about her conversation as to why she did or didn't do

1 something. I am going to allow it. I am going to have a short
2 leash on this --

3 MR. ANDREWS: Um-hmm, um-hmm.

4 HEARING OFFICER GOLLIN: -- and I want to see where it
5 wraps up.

6 MR. ANDREWS: Okay.

7 HEARING OFFICER GOLLIN: And, again, I may find it to be
8 relevant in deciding whatever issues that come to pass. But I
9 have given leeways to both sides on certain things, and I will
10 -- I won't -- this isn't opening the flood gates, be very clear
11 on that.

12 MR. ANDREWS: No, I understand, I understand.

13 HEARING OFFICER GOLLIN: All right, go ahead.

14 MR. ANDREWS: Okay.

15 Q BY MR. ANDREWS: So continue.

16 A I asked her why I was not informed of this or called, and
17 she stated that she took care of it through her night
18 supervisor, Barrett Oliver, on several occasions.

19 Q Now, one time when you came to work, did you find Barrett
20 Oliver up in your work area?

21 A I was leaving -- I was getting ready to leave work, and
22 Barrett Oliver came up to the lab. And you have got to come up
23 on the outside of the steps and come up into the lab, and I was
24 standing over by the door, ready to leave, and he came up with
25 papers in hand. And he went over -- to proceed to go over to

1 the wall and hang up papers. And they were papers stating for
2 union, "Vote Union Yes" and "Go Union." And I -- I will be
3 very honest with you, I don't know specifically what they said,
4 but I asked him to remove them. And I was directed -- he
5 responded with "No," he does not have to and I said -- I felt
6 that I couldn't take it any further. I talked to my
7 supervisor, Wayne Dailey, I think it was the next day, the
8 following next day when I came in, I went and talked with him
9 about him. And then I went up to the lab the next day and they
10 were removed.

11 Q But at the time when you saw Barrett Oliver posting them,
12 did you think you could take them down?

13 A No.

14 Q And why is that?

15 A Because he was the night supervisor.

16 Q Did Barrett Oliver ever talk directly to you about his
17 views of the Union?

18 A Yes.

19 Q And how did you feel about that?

20 HEARING OFFICER GOLLIN: Wait, wait.

21 MR. FIORETTO: I don't know where we are getting.

22 HEARING OFFICER GOLLIN: You want to ask her what he said
23 to her, their conversation is fine.

24 MR. ANDREWS: Well, he is going to object and just call it
25 hearsay.

- 1 A Down in the dry plant area, in the control room, at one
2 time.
- 3 Q And when was this?
- 4 A Probably -- not probably -- it was in April, I cannot tell
5 you exact date, a lot has been happening.
- 6 Q Who was present?
- 7 A Pardon?
- 8 Q Who was present?
- 9 A Quite a few people. Again, like I stated, it was shift
10 change, and that's when we usually seen Barrett. So it would
11 be mornings when I would come in, or the evenings when I would
12 leave, and it would be -- it could have been Jeff --
- 13 Q Let's focus on one at a time. We have to just focus on
14 one conversation.
- 15 A Okay. It would be Burdett Billings again, Mark -- I can't
16 think of Mark's last name -- Barrett, myself, that one time it
17 was Ralea Rainey. It could have been -- it wasn't. I can't
18 think of everybody that was there, I mean, it just depended on
19 --
- 20 Q Now I just want you to focus on one occasion in your mind
21 --
- 22 A Okay.
- 23 Q -- and tell us about that one occasion.
- 24 A Okay, what was stated?
- 25 Q And -- well, first, I just want to know who was present.

1 A Okay.

2 Q Okay, so you have told us about one occasion that you have

3 in mind in April, is that right?

4 A (No response.)

5 Q Okay, and --

6 MR. FIORETTO: I am sorry, you --

7 THE WITNESS: Correct.

8 MR. FIORETTO: You have to answer yes or no.

9 MR. ANDREWS: You have to verbalize.

10 THE WITNESS: Yes, yes, sorry.

11 Q BY MR. ANDREWS: And what was said by Barrett Oliver?

12 A Barrett stated -- we were all standing around in the group

13 -- and he stated that we should go for -- you know, we should

14 all vote union. If we don't vote union, we are all going to be

15 sorry that we don't vote union. We are never going to get more

16 money if we don't go the -- if we don't vote the union. The

17 union is going to do so much for us, that we should look into

18 it. He also stated that -- now that it's went this far, that

19 if we don't vote for union, there's a good possibility that we

20 probably all lose our jobs.

21 Q And did anyone say anything in response to what Barrett

22 Oliver said?

23 A There was a lot of conversation. I mean, there was a lot

24 of back and forth conversation. I don't know specifically.

25 There was several stated that they were -- there was so much --

- 1 Q BY MR. ANDREWS: So, did anyone express to you any
2 concerns based on what Barrett Oliver said?
- 3 A Yes.
- 4 Q And what did they express?
- 5 MR. FIORETTO: Can we say who?
- 6 HEARING OFFICER GOLLIN: You have got to get a time, you
7 have to get specific.
- 8 Q BY MR. ANDREWS: And was this at the same time that, or
9 shortly after Barrett Oliver had said these things?
- 10 A It was in the April time period, April, beginning of May
11 time frame.
- 12 Q All right. Well, let me ask you this: Did you feel
13 harassed by what Barrett Oliver said?
- 14 A Myself, personally, I did, yes.
- 15 Q All right.
- 16 A I did.
- 17 Q And why?
- 18 A Who wants to lose their job? I mean -- there's a lot. I
19 mean, he stated a lot of things, and people were nervous,
20 people were talking.
- 21 MR. FIORETTO: Objection as to people's emotional --
- 22 THE WITNESS: Sorry.
- 23 MR. FIORETTO: -- status, being nervous.
- 24 Q BY MR. ANDREWS: You have to keep it focused on you, okay,
25 so tell us. Why did you feel harassed?

1 A Why did I feel harassed? Because every time you turned
2 around they were throwing the union in your face.

3 Q Now, wait a second.

4 A Barrett Oliver.

5 MR. FIORETTO: Can we have a time frame? I mean, we have
6 only heard of one specific time in April, and now it is every
7 time. I think we should have it focus a little bit more with
8 specific dates and times.

9 HEARING OFFICER GOLLIN: Rebecca, we are not trying to
10 make it difficult for you, and I know that you have a lot of
11 things that you have to go through in your memory, and not all
12 of this is crystal clear as far as the specifics of details or
13 whatever. But we need to try to be able to pinpoint as best as
14 you can a time range, a location, who was present, what
15 specifically was said, you know, what you said in response.
16 Things like that are what's important, if you can recall.
17 Because when you paraphrase or generalize or conflate various
18 conversations into one, it creates an issue as to how precise
19 your recollection is. So that is why we are trying to -- you
20 know, trying to have you testify in a way that you can be
21 comfortable with as accurate. So that's why we are asking it
22 this way.

23 So, again, going back to -- you talked about one
24 conversation in April where there were certain statements made.
25 And you said that there was conversation back toward him. You

1 far as specifics. I mean, if you are saying that it happened
2 on a daily basis, a weekly basis, whatever, that's fine, but we
3 need the specifics as best as you can recall.

4 THE WITNESS: To the best of my recollection, one other
5 major thing -- the thing that I can think of is -- I think it
6 was towards the end of March, maybe the beginning of April,
7 they had given me a blue card, the union blue card, and he
8 asked me if I had signed it yet. And I said --

9 MR. FIORETTO: I am sorry, who?

10 THE WITNESS: Barrett.

11 MR. FIORETTO: Thank you.

12 THE WITNESS: Other occasions, Jeff would come up to me,
13 continuously, with --

14 HEARING OFFICER GOLLIN: We are not worried about Jeff.

15 THE WITNESS: Okay.

16 HEARING OFFICER GOLLIN: Jeff's status is not in question.

17 THE WITNESS: Okay.

18 HEARING OFFICER GOLLIN: Okay.

19 THE WITNESS: There would -- he had came up on me on two
20 separate occasions and asked if I had signed the card, and I
21 told him no. He asked me why, and I said "Because I haven't
22 made a decision yet."

23 HEARING OFFICER GOLLIN: Okay. Mr. Andrews, I didn't mean
24 to jump in --

25 MR. ANDREWS: No, that's all right.

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- 1 A From afar -- if I say I'm pretty positive, it was my
2 brother, Bart Billings, and I think it was that gentleman right
3 there.
- 4 Q You are pointing to Al Fogel, this gentleman?
- 5 A Yes.
- 6 Q And they were standing near the sign?
- 7 A They were standing over in that area, vicinity, if you are
8 looking out our office doors, it would have been over in that
9 vicinity directly right there.
- 10 Q Do you recall what time of day that was?
- 11 A Probably mid-morning.
- 12 Q Now, you work with Ralea Rainey --
- 13 A Yes, I do.
- 14 Q -- from time-to-time, is that right?
- 15 A Yes, I do.
- 16 Q Did Ralea ever work in the lab with you?
- 17 A Yes, she does -- she did, she does still.
- 18 Q And what does Ralea do in the lab with you?
- 19 MR. FIORETTO: Could we have a time period?
- 20 Q BY MR. ANDREWS: Well, from April to June, what did Ralea
21 do in the lab with you?
- 22 A The exact same thing I do. She helped load out trucks,
23 she did sieve analysis, she did the composites. She does
24 exactly the exact same thing that we all do in the lab, myself,
25 loading out trucks, lab/loadout.

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- 1 Q And how did Ralea work with you out there, between April
2 and June?
- 3 A Between April and June, anywhere from -- it could be up to
4 four, five days a weeks. Maybe -- depending if we needed her,
5 she would, you know, wherever, you know, she would be out there
6 to help fill in.
- 7 HEARING OFFICER GOLLIN: Do you work night shift?
- 8 THE WITNESS: I work day shift.
- 9 HEARING OFFICER GOLLIN: You work day shift.
- 10 THE WITNESS: Yes.
- 11 HEARING OFFICER GOLLIN: How long have you worked day
12 shift?
- 13 THE WITNESS: I worked day shift the whole entire time I
14 have been there.
- 15 HEARING OFFICER GOLLIN: Okay.
- 16 THE WITNESS: But I do fill in on night shifts.
- 17 HEARING OFFICER GOLLIN: Okay.
- 18 THE WITNESS: When needed.
- 19 Q BY MR. ANDREWS: Now, is -- is Barrett Oliver still the
20 night shift supervisor there?
- 21 A To my knowledge, no.
- 22 Q And when did you think that changed?
- 23 A When he took the day shift position.
- 24 Q And when is that?
- 25 A Mid-May -- May or June -- I am not quite sure.

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1 HEARING OFFICER GOLLIN: Do you recall if it was before or
2 after the election?

3 THE WITNESS: No, I do not.

4 HEARING OFFICER GOLLIN: Okay.

5 THE WITNESS: Can I ask what was the date again, the exact
6 date of the election?

7 HEARING OFFICER GOLLIN: June 9th.

8 THE WITNESS: June 9th, okay, that's what I thought. No,
9 I can't actually recollect the date.

10 MR. ANDREWS: I don't have anymore questions for this
11 witness.

12 HEARING OFFICER GOLLIN: Are you ready?

13 MR. FIORETTO: Yes.

14 HEARING OFFICER GOLLIN: Okay.

15 CROSS-EXAMINATION

16 Q BY MR. FIORETTO: Ms. Campobello -- see, my name is
17 Fioretto, so I can pronounce Campobello the right way. You are
18 listed on a monthly schedule, correct? Your name appears on a
19 monthly schedule that is posted on the dry --

20 A Correct.

21 Q Isn't it true that, for the months of May, June, and July
22 Ralea Rainey is not listed at all as a lab tech on any of the
23 schedules?

24 A No, she's not.

25 Q I am sorry?

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- 1 right?
- 2 A I leave, correct.
- 3 Q Right. And I believe you said you guys gathered and
- 4 stayed maybe 10, 15 minutes, correct?
- 5 A Correct.
- 6 Q So you don't know what Barrett Oliver may have said to his
- 7 employees in terms of what work was going to be done on each
- 8 and every day of the shift, do you?
- 9 A Not each and every day, no, sir. But when we would go in
- 10 at night and there would be a list, he would direct everybody
- 11 where they needed to go and what they needed to do.
- 12 Q And how often was that --
- 13 A And then talking with -- quite often, and --
- 14 Q Can you tell us from April --
- 15 A -- just --
- 16 Q Well, I am sorry, let me finish my question.
- 17 A Okay.
- 18 Q From April until the end of July, how often would you be a
- 19 witness to this, where there was a list of tasks that needed to
- 20 be done, and Barrett Oliver actually instructed the employees
- 21 on what to do?
- 22 A Probably -- the end of April to the beginning of July?
- 23 Q Let's say June, because --
- 24 A Okay.
- 25 Q -- I think he got transferred to the days in the middle of

1 Q Did Barrett also say, "Oh, and by the way, I'll be doing
2 this, I'll operate the end loader"?

3 A No, he was telling people what they needed to do and where
4 they needed to go.

5 Q Did it ever come up in terms of what he was going to do,
6 during that 10 or 15 minutes that you were there, you never
7 noticed or you never heard him say what he was planning on
8 doing during the night shift?

9 A No, as God is my witness, no. He would tell everybody
10 what to do, and then we would be kind of talking and we'd just
11 kind of go home or whatever. And he was, at that time, telling
12 people, directing them, what they needed to do. "Bart, you
13 need to run the loader tonight." "John, you are going up to
14 the wet plant" or --

15 Q And that was based on what -- you said there was a list?

16 A Not necessarily always a list. I mean, the day shift, if
17 they would run over, and they were scheduled to do something
18 during the day shift, and it wasn't all taken care of, it would
19 go down over to the night shift, and they'd say "Hey, Barrett,
20 this is what I need your guys to do tonight."

21 Q And did you ever see that list?

22 A Pardon?

23 Q Did you ever see that list?

24 A I didn't go right up and look exactly at it, it was always
25 laying up on by the controls.

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1 the Union asked you to stop talking. So I would like you to go
2 ahead and continue what it was you were describing regarding
3 Barrett Oliver and the lab personnel that you worked with.

4 A When I would come in during the day, I know for a fact he
5 asked me -- he had asked me if -- how did I know that he told
6 the personnel what to do -- when I would come in and something
7 would be specifically done that was out of standard, I would
8 ask them, "Who told you that?" "Well, our night supervisor."

9 MR. FIORETTO: Objection, hearsay.

10 Q BY MR. ANDREWS: And what did you do, based on that?

11 A Talked to Wayne Dailey a lot about it, because Barrett is
12 -- he was the night supervisor at the time.

13 Q And did that have any impact on your work, in terms of
14 this quality control issue?

15 A Yes, it did.

16 Q And what was the impact it had on your work?

17 A The impact is that when they send out sand below grade, it
18 can get all the way to Texas and be rejected, and that is out
19 of Proppant's out-of-pocket, we pay for that. And out of the
20 quality control, I have been trained by Dae Locklear, which is
21 the head of Proppant Specialists, the quality control, and so I
22 felt that they were supposed to come to me when there was a
23 question about the quality of the actual product that was going
24 out the door. And there was several issues with the product
25 going out the door, during that time frame of April to June.

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1 And when I brought that to Sandy Haskin's attention, which was
2 one of the night shift girls that worked, she stated -- she
3 stated right to me, she says, "I took care of it through my
4 night supervisor, Barrett."

5 MR. ANDREWS: No further questions.

6 MR. FIORETTO: I forgot to include a copy of her job
7 description. I would like the ability on recross to ask her
8 about her job description. I just want to make sure that the
9 record is complete in terms of what she was given when she was
10 hired.

11 HEARING OFFICER GOLLIN: Sure. I'm not saying I've
12 admitted it, I'm saying he can present the witness with the
13 document.

14 (EXHIBIT MARKED: UNION'S EXHIBIT NO. 17.)

15 RECROSS-EXAMINATION

16 Q BY MR. FIORETTO: Ms. Campobello, I'm showing you what I
17 have marked as Union Exhibit 17, for identification, and ask
18 you to take a look at this two-page document.

19 (Witness proffered document.)

20 Q Are you familiar with it?

21 A Um-hmm.

22 Q Can you tell us what this is, Ms. Campobello?

23 A It's a description of job duties pertaining, it looks
24 like, to the lab.

25 Q As a sand plant operator, correct?

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C E R T I F I C A T E

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This is to certify that the attached proceedings
before the NATIONAL LABOR RELATIONS BOARD, REGION THIRTY

In the Matter of:)
)
PROPPANT SPECIALISTS, LLC,)
)
)
Employer,)
)
and) Case 30-RC-6783
)
INTERNATIONAL UNION OF)
OPERATING ENGINEERS,)
LOCAL 139, AFL-CIO,)
)
Petitioner.)

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Date: August 30, 2011
Place: Tomah, Wisconsin
were held according to the record, and that this is the
original, complete, true and accurate transcript which has
been compared to the reporting or recording accomplished at
the hearing, that the exhibit files have been checked for
completeness and no exhibits received in evidence or in the
rejected exhibit file are missing.

Christopher Walls
Official Reporter

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Champlin, Minnesota 55316
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BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
PROPPANT SPECIALISTS, LLC,)	
)	
)	
Employer,)	
)	
and)	Case 30-RC-6783
)	
INTERNATIONAL UNION OF)	
OPERATING ENGINEERS,)	
LOCAL 139, AFL-CIO,)	
)	
Petitioner.)	

The above entitled matter came on for hearing pursuant to adjournment, before Andrew S. Gollin, Hearing Officer, in the Council Chambers of the Tomah Municipal Center, Second Floor, 819 Superior Avenue, Tomah, Wisconsin, on Wednesday, August 31, 2011, at 8:18 a.m.

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- 1 Q Who did you report to?
- 2 A Barrett Oliver.
- 3 Q And when you - what time did you show up for work for the
- 4 night shift?
- 5 A Well the night shift started at 6 pm but I was usually
- 6 there at 5:45.
- 7 Q What happened between 5:45 and 6?
- 8 A We would get our orders of what we were doing that night.
- 9 I might be the utility man in the wet plant, or work the loader.
- 10 At the time we didn't have a schedule with our job on it. So I
- 11 knew I'd either be doing the utility work, or doing the loader
- 12 at the wet plant.
- 13 Q And when you said you would get your orders, who would you
- 14 get your orders from?
- 15 A From Barrett Oliver.
- 16 Q And what sort of orders did you receive from Barrett
- 17 Oliver?
- 18 A He would tell me, for instance, if I was going to be on the
- 19 loader that night, or running the wet plant itself, in the
- 20 building, and doing the rounds on all the machinery.
- 21 Q Where did this take place where you received your orders?
- 22 A Usually in the - we call it the wet plant shack.
- 23 Q Who else was present other than yourself and Barrett
- 24 Oliver?
- 25 A Depending on the employees at work, but usually Jeff

1 Sobczak, or sometimes Ethan - I can't - he's got a hard name to
2 pronounce, but usually Ethan was in there sometimes. Mostly I
3 worked with Jeff.

4 Q Were you always assigned to the wet plant area?

5 A Yes.

6 Q What were the various tasks that you were assigned to
7 perform through the orders from Barrett Oliver?

8 A Well, if I was going to be the wet plant operator, you
9 know, that's keeping an eye on all the - how much tonnage we're
10 running and stuff like that, but we'd have to make rounds on all
11 the conveyors, and the feed hopper, the hydrosizer, check to
12 make sure stuff was, you know, nothing's broke or a hazard.

13 Q And what would happen if something was broke?

14 A Well we'd fix it right away. Or shut the plant down. And
15 I'd have to tell Barrett or whoever was there at the time.
16 Barrett usually worked - he worked just about every day.

17 Q When you say, every day, do you mean every night shift?

18 A Yes.

19 Q If Barrett wasn't there, who would you tell?

20 A If Barrett wasn't there usually Jeff would be there, and he
21 was senior to me, so if we had a problem we'd shut down and
22 attempt to fix it.

23 Q Now do you have the ability to just shut things down on
24 your own?

25 MR. FIORETTO: I'm sorry. Could we just slow down just a

1 little bit. I'm trying to take notes. My apologies. It's a
2 little early.

3 Q BY MR. ANDREWS: If something broke, did you have authority
4 to shut things down?

5 A If it was an unsafe situation, you know. But sometimes it
6 would be a rip in the belt, say a small rip, and if I called
7 Barrett to come down, he'd say oh run it 'til day shift gets
8 here, or whatever you know.

9 Q Were you present when Mine Safety Health Administration
10 came on site?

11 A Several times, yes.

12 Q Were you on the night shift during that time?

13 A Umm, the one time I was when they came.

14 Q And did Mine Safety Health Administration officials come to
15 your particular work site?

16 A Yes, they walked through.

17 Q And were they accompanied by anyone from Proppant?

18 A With Barrett Oliver.

19 Q During your pre-work meetings - can we call them that -
20 between 5:45 and 6:00.

21 A Yes.

22 Q Did Barrett Oliver talk about anything else other than your
23 work assignments?

24 A Well the union was brought up a lot of times.

25 Q And who brought that up?

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1 A Barrett did. Jeff, or Mark, or Bart Billings when he did
2 work there.

3 Q On the day that you voted, did you notice anything as you
4 walked up to the voting area, to the building where the voting
5 took place?

6 A Well I drove up there because it was the end of my shift,
7 and as I was pulling out - they have two houses there, the one's
8 the office, and that other house - I pulled out and there was a
9 sign in the lawn, "Vote Union", and that's what I - first thing
10 I saw when I pulled out to pull back in. You kind of have to
11 pull back out to pull back in the parking lot.

12 Q Was there just one sign, or two signs?

13 A It was one big sign, and it was talking about "backed by
14 the community".

15 Q What did you think that meant, "backed by the community"?

16 MR. FIORETTO: Objection, as to relevance.

17 HEARING OFFICER GOLLIN: I'm going to sustain the objection.
18 If you can recall what it said.

19 THE WITNESS: Well, it said "backed by the community" and I
20 already knew that the community -

21 HEARING OFFICER GOLLIN: No. I'm asking you what did the
22 sign say?

23 THE WITNESS: Oh, I'm sorry. It just said "backed by the
24 community. Vote Union", and "Local 139", I believe it is.

25 HEARING OFFICER GOLLIN: Okay. All right, I'm going to

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1 reverse my ruling only to the extent that I'm going to allow him
2 to - we've allowed subjective testimony. I've already indicated
3 to you how I value subjective testimony based upon my
4 understanding of the law. I will allow this witness to
5 testimony about his subjective belief. You can make arguments
6 one way or another as to what weight should be given to it.
7 But, you know, we've already gone down this path to a certain
8 extent. It's unfair to change paths at this point, so I'm going
9 to allow limited questioning about this person's personal
10 impressions and that's it.

11 Q BY MR. ANDREWS: So what impression did that sign make on
12 you?

13 A Umm - well, to me, the community is already upset with
14 Proppant because of the trucks.

15 MR. FIORETTO: Objection as to that. I mean, how this
16 affected him, but he's starting to talk about views of the
17 community and their belief.

18 HEARING OFFICER GOLLIN: All right.

19 MR. ANDREWS: But as an offer of proof here, if the sign
20 says the community supports Local 139 that is an enigmatic
21 statement that needs to be explained.

22 HEARING OFFICER GOLLIN: All right, I've already indicated
23 that I'm going to let him explain his perception of the sign.
24 I'm going to allow him to provide a limited amount of context as
25 to it. Obviously if it begins to be coming into what people

1 have said to him from the community, things like that, you know,
2 if we start going down that path, the hearsay issue, but like I
3 said I'm going to allow the limited testimony of his subjective
4 beliefs and I'm going to allow the context as to what gave rise
5 to that subjective belief.

6 MR. FIORETTO: Okay.

7 Q BY MR. ANDREWS: Please continue.

8 THE WITNESS: Okay. So I can tell my view of what I
9 thought, right?

10 HEARING OFFICER GOLLIN: Continue with what you were
11 testifying.

12 Q BY MR. ANDREWS: My question was, you saw the sign, what was
13 your impression of the sign?

14 A My impression when I saw that the community - the part
15 about the community was they already wanted - the community
16 wanted to limit trucks, and limiting trucks meant limiting hours
17 to me, so I'm like you know at the time we were getting a lot of
18 overtime, and to me it was going to be that our checks were
19 going to suffer so that's where I stood there.

20 Q In the pre-work discussions about the union, had there been
21 any discussion about what it would mean if the union was voted
22 in to Proppant?

23 MR. FIORETTO: I'm sorry, would you repeat the question? I
24 was trying to follow it.

25 HEARING OFFICER GOLLIN: All right, let me do it this way

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1 THE WITNESS: Okay.

2 HEARING OFFICER GOLLIN: -- and I'm only concerned with Mr.
3 Oliver's specific statements to you -

4 THE WITNESS: Okay.

5 HEARING OFFICER GOLLIN: - and not other people's
6 statements. I mean, there will be maybe questions as to were
7 other people making similar statements, etcetera, but right now
8 we're just concerned with Barrett Oliver and what, if anything,
9 he said to you about the union. Okay?

10 THE WITNESS: Okay. Barrett talked to me about voting for
11 the union, and what the benefits would be, and also Jeff was
12 there because, like I said, we - basically it was a small crew
13 on nights at the time, and Barrett would talk about how the
14 union was going to be a benefit to come in there. And Jeff
15 would also talk about the union. And through the night as I
16 worked with Jeff he would be talking about constantly trying to
17 get me to vote yes. Or get a - sign a blue card.

18 Q BY MR. ANDREWS: Okay. Did you ever do any investigation on
19 your own as to what the benefit would be to have a union card
20 from this particular local, Local 139?

21 A Yes, I did.

22 Q And how did you go about doing that?

23 A I talked to some people who were in the union in the - I
24 believe it was the 139th, and I talked to them at Oakdale, and
25 they said we would get - I believe it was a "C" card. And -

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- 1 Q So they did not identify themselves as members of Local
2 139?
- 3 A No.
- 4 Q I'm not going to ask anything further about that, then.
- 5 A And -
- 6 Q I don't want to - please. I can't ask anything more about
7 that. All right. Did anyone from Local 139 ever meet with you
8 at the Oakdale facility?
- 9 A No, just - no.
- 10 Q Now on the day that you voted, what did you notice as you -
11 can you tell us your observations as you entered the voting
12 area?
- 13 A When I went into the voting area I noticed my - Bart
14 Billings was out in the parking lot with Travis - I can't
15 remember Travis' last name - he works there also - and Jeff and
16 Mark, were in the parking lot. I went into the voting area,
17 went upstairs and had - it was Harry, the mechanic, was at a
18 table, Barrett Oliver was at the table, and I can't remember who
19 else was at the table at the time.
- 20 Q And did you notice what Barrett Oliver was wearing?
- 21 A Yes, I did.
- 22 Q And what was he wearing?
- 23 A He had a shirt on that said the Local 139th.
- 24 Q Did he have a hat on?
- 25 A I can't recall. I do know he had a shirt.

- 1 A No.
- 2 Q This was before work started, right?
- 3 A Right.
- 4 Q So these discussions that you had when you talked earlier
- 5 about the pros and cons of unions, and the discussions whether
- 6 you should vote for the union, that all took place before you
- 7 started work, correct?
- 8 A No.
- 9 Q Okay. Well, I thought your testimony was from 5:45 to 6
- 10 there was some discussion.
- 11 A Yes. There was also discussion throughout the night as,
- 12 say, Barrett would come two, three times to check on the
- 13 production, see how we're going, and -
- 14 Q And during those times what do you recall him saying to you
- 15 about the union?
- 16 A He was talking about how his family had been in the union,
- 17 and how good it was, and the benefits of the union.
- 18 Q Did you ask any questions, or respond to him at all?
- 19 A I asked him - well, when I heard about the "C" card, then I
- 20 asked him what that was and stuff like that.
- 21 Q So you engaged him in discussion during this time period?
- 22 A Yes.
- 23 Q You didn't tell him to stop.
- 24 A No.
- 25 Q Did other employees, such as Jeff, talk to you during work

- 1 if something was going to wrecked.
- 2 Q BY MR. FIORETTO: And how many times while you worked the
3 night shift with Barrett did he have to shut the plant down, if
4 you recall?
- 5 A I don't recall the number.
- 6 Q Is it possible that it never had to be shut down?
- 7 A It had been shut down, definitely.
- 8 Q And, again, was it one time or was it 50 times.
- 9 A We had a lot of breakdowns, so I would say probably 20
10 times we've had that place shut down at least.
- 11 Q And do you know whether or not he had to - do you know
12 whether or not he spoke to anybody before he made the decision
13 to shut the plant down?
- 14 A Well -
- 15 Q You don't know.
- 16 A - at the time - no, I don't know if he talked to anybody.
- 17 Q Okay. And were there any occasions when you worked the
18 night shift with Barrett where Barrett sent all the employees
19 home before 6 am, before the shift ended?
- 20 A Yes.
- 21 Q It happened once, right?
- 22 A The dry plant.
- 23 Q Right. And what had happened?
- 24 A I believe they ran out of sand.
- 25 Q And do you recall who was there?

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1 at or near the signs holding them up or milling around near the
2 sign?

3 A No. Not when I went through.

4 MR. FIORETTO: I have nothing further.

5 HEARING OFFICER GOLLIN: Redirect?

6 REDIRECT EXAMINATION

7 Q BY MR. ANDREWS: Now a little bit ago you were shown these
8 schedules, and asked some questions about them. Did you refer
9 to those schedules when you would come on to the night shift to
10 find out when you were going to be working, or where you were
11 going to be working?

12 A Yes.

13 Q And when you looked at those schedules was there ever a
14 time where you didn't end up working at that same spot that was
15 listed on the schedule?

16 A Yes.

17 Q And how would that happen?

18 A Possibly the plant was down or something, and we'd have to
19 go fix something else. We would be directed to put a belt on,
20 or whatever.

21 Q And who would direct you to put that belt on?

22 A Usually Barrett would.

23 Q Now on this schedule you saw where names were listed next
24 to the title "production supervisor".

25 A Yes.

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- 1 Q You saw Todd's name listed?
- 2 A Yes.
- 3 Q And you saw Barrett's name listed?
- 4 A Yes.
- 5 Q Did Todd ever call himself a production supervisor when you
- 6 were working on days with him?
- 7 A Not to my recollection, no.
- 8 Q Did Barrett call himself a supervisor when you worked with
- 9 Barrett at night?
- 10 A He's referred to it as supervisor, because that's when I
- 11 started he was supervisor.
- 12 MR. FIORETTO: I'm sorry, did he refer himself to that or
- 13 did others? I didn't hear.
- 14 MR. ANDREWS: You can object.
- 15 HEARING OFFICER GOLLIN: Right.
- 16 MR. FIORETTO: Okay, objection, non-responsive.
- 17 HEARING OFFICER GOLLIN: Non-responsive. The question is,
- 18 did Barrett ever identify himself to you as a supervisor?
- 19 THE WITNESS: Yes.
- 20 HEARING OFFICER GOLLIN: Okay, and specifically when was
- 21 that?
- 22 THE WITNESS: What I heard was when he would talk - say we
- 23 would have a driver come in, he would say, I'm the nighttime
- 24 supervisor. He had said that.
- 25 MR. FIORETTO: It's still non-responsive.

1 HEARING OFFICER GOLLIN: You heard Barrett say to a driver
2 that would come in to pick up sand or drop off sand that he was
3 the nighttime supervisor?

4 THE WITNESS: I have heard him say it, yes.

5 HEARING OFFICER GOLLIN: You have overheard him physically
6 say that to someone.

7 THE WITNESS: Yes.

8 HEARING OFFICER GOLLIN: Okay. Is that person, that driver,
9 an employee of Proppant?

10 THE WITNESS: No, he was of Vertex.

11 HEARING OFFICER GOLLIN: Okay.

12 MR. ANDREWS: No further questions.

13 HEARING OFFICER GOLLIN: All right, I've got a couple
14 questions that I want to follow up on. When - well, first of
15 all I'm going to ask the Union, are you going to be moving for
16 the introduction of 55 and 56?

17 MR. FIORETTO: I'm sorry?

18 HEARING OFFICER GOLLIN: Are you moving for the introduction
19 of 55 and 56?

20 MR. FIORETTO: Not at this point. I only used it to refresh
21 his recollection. If the Employer's attorney wants - thinks
22 it's appropriate to introduce it at this point. I don't think
23 we've laid a proper foundation yet, because the author of this
24 document has yet to testify.

25 HEARING OFFICER GOLLIN: Okay. I just wanted to understand

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1 HEARING OFFICER GOLLIN: Did anyone - well, first of all,
2 who would tell you that you would be doing something else than
3 what was on the schedule?

4 THE WITNESS: Normally the supervisor.

5 HEARING OFFICER GOLLIN: Specifically who do you recall -
6 when that occurred who do you specifically telling you?

7 THE WITNESS: Well usually it was Barrett.

8 HEARING OFFICER GOLLIN: Okay.

9 THE WITNESS: Because, like I said, we worked on the night
10 shift at the time for quite a while - not quite a while, but,
11 you know, I was only there like four months.

12 HEARING OFFICER GOLLIN: Okay. And as far as - and your
13 specific recollection is is that you would be asked to fix
14 something and that would be an instance in which you would be
15 taken off of what you would otherwise be listed on the schedule
16 as doing, correct?

17 THE WITNESS: Yes.

18 HEARING OFFICER GOLLIN: What I'm trying to understand, were
19 you the only person available who could do that job?

20 THE WITNESS: Usually we worked in teams.

21 HEARING OFFICER GOLLIN: Okay.

22 THE WITNESS: So if there was be a belt there would be - if
23 there was two or three of us at the wet plant that night, we'd
24 all work together because we couldn't put sand in the hopper
25 because the belt was already broken. It couldn't disperse the

1 sand.

2 HEARING OFFICER GOLLIN: Okay.

3 THE WITNESS: So we all had to work on it to get it working
4 again.

5 HEARING OFFICER GOLLIN: So you're saying that when you
6 would be - let's use the term -- reassigned to another task, it
7 would mean you and everyone else that was working in that area
8 would be reassigned to fix the item because you work in teams.

9 THE WITNESS: Normally, yes.

10 HEARING OFFICER GOLLIN: Okay, and that's because you
11 wouldn't be able to do your job. If the belt isn't fixed
12 there's nothing going on the conveyor or in the machine, so in
13 order to do your job you would have to be - you would have to go
14 fix, replace, whatever.

15 THE WITNESS: Yes.

16 HEARING OFFICER GOLLIN: All right, do you recall other
17 instances in which you would be, again I'll use the term
18 reassigned, other than if something was broken?

19 THE WITNESS: If someone didn't show up for work, they
20 called in sick, or something like that, or possibly if they were
21 tardy and we needed to get rolling.

22 HEARING OFFICER GOLLIN: And again, I don't want you to
23 guess if you don't know the answer, you don't know the answer,
24 do you know how the decision was made to pick you to go and
25 cover for the person who was not there?

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1 THE WITNESS: I was probably the only other person there, or
2 I might have been the only person that was tasked trained on
3 that piece of equipment. Say the loader, we had new employees
4 and then we had some that were from Manpower, and they couldn't
5 operate machinery so I would have to go on the loader, say, if I
6 was going to be - maybe I was wet plant that night, the
7 operation, but they were sick or whatever, I would jump on the
8 loader because I was the only other person that would be able to
9 run it.

10 HEARING OFFICER GOLLIN: Okay. Do you recall any other
11 instances in which you'd be reassigned other than something was
12 broken and you had to fix it, or someone didn't show up? Any
13 other instances in which?

14 THE WITNESS: Umm - now and then - like I said, if I worked
15 with Jeff sometimes he would get in the loader, to give me a
16 break, and I would go in the wet plant and run the sand samples
17 or whatever. Stuff like that.

18 HEARING OFFICER GOLLIN: How was that decision made?

19 THE WITNESS: That decision would be made between the two of
20 us.

21 HEARING OFFICER GOLLIN: Okay.

22 THE WITNESS: As long as the production stayed rolling good
23 that wasn't - that usually wasn't an issue.

24 HEARING OFFICER GOLLIN: All right. Any other instances
25 that you can think of where you would be reassigned or - other

1 than the three that you've just talked about?

2 THE WITNESS: Not that I can think of off hand.

3 HEARING OFFICER GOLLIN: When you were given instruction by
4 Mr. Oliver at the start of the shift, was he - I think we've
5 talked about this- do you know whether or not he was reading
6 anything?

7 THE WITNESS: I - usually not. Just kind of came out and
8 gave a verbal job description.

9 HEARING OFFICER GOLLIN: And again I don't want you guessing
10 but, to your knowledge, do you have any basis as to how he went
11 about making those decisions if he made any decisions?

12 THE WITNESS: I think he just - well, no. I don't know how
13 he made the decision.

14 HEARING OFFICER GOLLIN: Okay. Any follow up to my
15 questions?

16 RESUMED REDIRECT EXAMINATION

17 Q BY MR. ANDREWS: When you were -

18 MR. ANDREWS: Yes, just a -

19 HEARING OFFICER GOLLIN: Go ahead.

20 Q BY MR. ANDREWS: When you were being assigned by Barrett
21 Oliver to a particular task, was there any discussion that
22 accompanied that or was it just simply go there, go there?

23 A We usually knew our job pretty well and usually it was
24 just, run the loader, possibly back haul to the dry plant also,
25 just - we would fill the wet plant, the hopper there, but

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1 sometimes we would haul dry sand up to the dry plant and
2 stockpile.

3 Q And hauling dry sand to the dry plant, was that a decision
4 you made on your own or did you have to have Barrett Oliver tell
5 you to go do that?

6 A Well I had originally been told when I was trained, you
7 know, we did that. That's what we were trained to do. If we
8 had some down time. To haul sand.

9 Q Did you have to check with Barrett Oliver to go do that,
10 though?

11 A Not usually. He would be out there, you know. Like I said
12 he made his rounds but usually I didn't have to ask to do it.

13 Q Who gave instruction to the Manpower employees?

14 MR. FIORETTO: I'm sorry, is there a basis as to whether or
15 not there were Manpower employees?

16 HEARING OFFICER GOLLIN: Yeah, he just testified that there
17 were Manpower employees there that couldn't perform -

18 MR. FIORETTO: My apologies.

19 HEARING OFFICER GOLLIN: - or that couldn't operate
20 machinery.

21 MR. FIORETTO: My apologies.

22 HEARING OFFICER GOLLIN: And, again, if you know, based upon
23 your personal observations, his question is who would give
24 instructions to the Manpower employees?

25 THE WITNESS: Barrett gave instructions to them just like he

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1 did to me.

2 HEARING OFFICER GOLLIN: And do you know the basis as to how
3 he went about deciding what, if any, instructions to give to
4 these people?

5 THE WITNESS: Well, the instructions were - like I said,
6 they couldn't operate machinery so normally they would be doing
7 maintenance on the wet plant itself.

8 HEARING OFFICER GOLLIN: And when you say, maintenance, just
9 so I'm clear because we had that individual before that talked
10 about maintenance and that involved electrical work, and
11 mechanical work, and things of that effect. I'm assuming that's
12 not what you mean. I think maintenance, you mean like
13 maintaining the environment.

14 THE WITNESS: Maintaining, yeah.

15 HEARING OFFICER GOLLIN: Like cleaning.

16 THE WITNESS: Cleaning, you know, running samples, the sand
17 samples. They would have to run them. Run the fire hose. We
18 wash a lot of sand out with the fire hose. Just kind of menial
19 tasks where no one would get hurt.

20 HEARING OFFICER GOLLIN: Okay.

21 THE WITNESS: Or no chance of getting hurt.

22 HEARING OFFICER GOLLIN: Okay.

23 MR. FIORETTO: I have a few as well.

24 HEARING OFFICER GOLLIN: Well, let's make sure he's done.

25 MR. FIORETTO: My apologies.

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1 MR. ANDREWS: No further questions.

2 HEARING OFFICER GOLLIN: Okay. All right, so now.

3 MR. FIORETTO: I'm sorry. I'm jumping the gun.

4 RECROSS-EXAMINATION

5 Q BY MR. FIORETTO: In terms of these Manpower employees, you
6 only heard or observed Barrett talking to them during that 5:45
7 to 6 am - I'm sorry, 5:45 to 6 pm period before the shift
8 started because you were performing your tasks during your 12
9 hour shift. You don't know what Mr. Oliver may have said to
10 them, right?

11 A Other than - I didn't always work in the loader, so if I
12 was in the - say, the wet shack with - usually it was Chuck,
13 Chuck Miller. I worked with him a lot. And he might come in
14 and redirect him to go work in the dry plant.

15 Q And I want to clear about something, your testimony is that
16 before the shift started Barrett might say to you, you're going
17 to be the plant operator, and say to Jeff you're going to be
18 operating the loader, right?

19 A Yes.

20 Q And your testimony was, during those 12 hours -- your 12
21 hour shift, you and Jeff were able to switch job tasks and you
22 would then run the loader and he would run the plant, right?

23 A Sometimes, yes.

24 Q You wouldn't have to get permission from Barrett, would
25 you?

- 1 Q Did you receive any training in the dry plant?
- 2 A No, not really a whole lot. As a subcontractor I remember
- 3 how it operated and everything, but I never went in the control
- 4 room all that much and knew how to operate it, anything like
- 5 that.
- 6 Q Do you know Barrett Oliver?
- 7 A Yes.
- 8 Q And how do you know Barrett Oliver?
- 9 A He was the nighttime supervisor for the dry plant. Well he
- 10 actually was the nighttime supervisor for both plants.
- 11 Q Did you ever work nights?
- 12 A After about two or three weeks of starting, and then I went
- 13 to nights for like two or three weeks. Something like that.
- 14 Q And when you went to nights who did you report to?
- 15 A Barrett, at that time.
- 16 Q Did - how did Barrett identify himself to you?
- 17 A He was my nighttime supervisor at the time.
- 18 Q Did Barrett say to you that he was your nighttime
- 19 supervisor?
- 20 A Yes. Yes.
- 21 Q Did you receive any training while you were on the nights?
- 22 A He taught me how to do some more work on the wet plant at
- 23 the time. He had a different way of running it than Rizzo did
- 24 so he showed me a lot of little secrets and stuff, of the
- 25 adjustments and stuff on there.

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- 1 Q BY MR. ANDREWS: Who had the keys to unlock the locks that
2 were locked?
- 3 A Well each individual employee has locks to their - or keys
4 to their own locks. At that time he had keys to the shop.
5 Barrett had keys to the shop and to the office, and they were
6 all locked. The shop ended up being locked up too at that time
7 that night.
- 8 Q So who unlocked the shop and who unlocked the office to
9 allow you in?
- 10 A Barrett unlocked the office a different time and let me in.
- 11 Q Did you have keys to the office?
- 12 A No, not at the time.
- 13 Q Do you have keys to the office now?
- 14 A Yes.
- 15 Q When did you get keys to the office?
- 16 A About the second week of May, I think. Something like
17 that.
- 18 Q Did you receive a call at one time where you were told to
19 come in and remove a lock?
- 20 A Yes.
- 21 Q When was that?
- 22 A Oh, that would have been - think here - end of April,
23 somewhere in there. End of April, first week of May. Somewhere
24 in that area.
- 25 Q And who did you receive the call from?

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1 that.

2 Q BY MR. ANDREWS: And you testified a moment ago that you
3 received training from Barrett when you were on the night shift.
4 What did that consist of?

5 A Basically how they ran the night shift. He had people,
6 certain people, on loaders, certain people backhauling, some
7 people cleaning, he had the dry plant pretty well set up so I
8 just kind of - he showed me how to get the wet plant set up with
9 how to coordinate the people and that kind of thing.

10 Q Did Barrett explain to you how he made any of the decisions
11 on the night shift?

12 A Basically who he thought was good at that spot, and
13 sometimes he'd rotate people around. He knew the people a
14 little bit better than I did, 'cuz I was fairly new.

15 Q Is it a matter of just knowing the people, or was there
16 anything else that you learned from your time working with
17 Barrett?

18 A Just the order of events of how to do stuff. The timing of
19 it. When there's certain trucks coming in you can get them to
20 help you backhaul, and how fast the machinery runs as far as the
21 wet plant, how not to push it too much, and just kind of
22 explaining the paperwork and stuff like that too because a lot
23 of the stuff I was kind of unsure about. Filling out the
24 vehicle inspection sheets, stuff like that.

25 Q Was there a time when Barrett Oliver gave you instruction

1 HEARING OFFICER GOLLIN: While we're doing our best, you
2 know, we can only write so fast.

3 THE WITNESS: I understand. At that time when John was
4 dismissed Mike Rizzo was still there for another week or so, and
5 the last couple of days I asked him - when I started to do that
6 schedule it was a Sunday - so I was kind of lost on the days and
7 the nights as far as who worked when and what they did, so he
8 gave me a little bit of input that first -

9 MR. ANDREWS: I'm sorry, who's "he"?

10 THE WITNESS: Mike Rizzo gave me a little bit of input on
11 Monday and Tuesday of that week. Brandon gave me some input on
12 who he saw where, and Barrett pretty much gave me the input on
13 all the night, how he had the night shift all laid out. So I
14 just kind of went from there, and as the weeks progressed
15 working on the schedule, I'd talk to him in the mornings when
16 I'd come in.

17 MR. ANDREWS: Okay, who's "him"?

18 THE WITNESS: I would talk to Barrett in the mornings when I
19 came in for work, and asked if there was anybody that needed
20 days switched around or anything like that, and he said so far
21 everything's been fine.

22 Q BY MR. ANDREWS: So the original input for the night
23 schedule, if I'm to understand your testimony correctly, came
24 from Barrett to you?

25 A Yes. Yes, because he knew how the nights ran, and who did

1 what the best, and there was certain people that were task
2 trained on the drier that Barrett knew about --

3 MR. FIORETTO: Objection as to what this witness knows that
4 Barrett knew.

5 HEARING OFFICER GOLLIN: Yes, I want you to limit your
6 testimony to what Barrett specifically said to you, not what you
7 assume based upon what you think may be the basis for how he
8 went about doing things. So just specifically limit yourself to
9 what Barrett said to you as far as scheduling and anything like
10 that, okay?

11 THE WITNESS: Okay. Well Barrett wanted Bart Billings on
12 the loaders, Mark Salzwedel, he was on the loader as well, Bobby
13 Shaw was one of Barrett's best drier operators.

14 MR. FIORETTO: Non-responsive.

15 HEARING OFFICER GOLLIN: Okay, again, limit yourself to what
16 - if he said to you - if Barrett said to you -

17 THE WITNESS: That's what he said.

18 HEARING OFFICER GOLLIN: Okay, then he is being responsive.

19 THE WITNESS: Yes.

20 HEARING OFFICER GOLLIN: So then just make sure you're
21 limiting yourself to exactly what Oliver said to you.

22 THE WITNESS: Yes.

23 HEARING OFFICER GOLLIN: And, again, make sure we're talking
24 about - what time - we know what time frame you're talking
25 about.

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1 Q BY MR. ANDREWS: So just to clarify this, because we've had
2 a number of interruptions and - I want to go back to the
3 question, how did you know what to put into the night schedule?
4 How did you learn -

5 A Barrett Oliver told me where to - where these people - they
6 function the best at.

7 Q What did Barrett Oliver say to you?

8 A He told me to put Bobby on the drier, put Bart Billings on
9 the loader, Mark Salzwedel on the other loader -

10 MR. ANDREWS: Okay, I'm just going to object. This constant
11 interruption to try to throw off the testimony of the witness -

12 MR. FIORETTO: No. It is not to throw off the testimony.

13 HEARING OFFICER GOLLIN: He's trying to take notes.

14 MR. FIORETTO: I'm trying to take notes.

15 HEARING OFFICER GOLLIN: All right. Let's go through this
16 again. You're not doing anything wrong. Just slow it down a
17 little bit.

18 THE WITNESS: Okay.

19 HEARING OFFICER GOLLIN: So he can take notes. You're fine.
20 We're going to go through it. I'm going to ask you to do it
21 slowly -

22 MR. FIORETTO: Thank you.

23 HEARING OFFICER GOLLIN: - and then we're going to go - but
24 we're not going to keep rehashing it. You got to kind of keep
25 up. I've got to keep up. We're just - do us the favor of -

- 1 going to do. So, aside from that, he is testifying about what
2 Barrett said to him.
- 3 Q BY MR. ANDREWS: Did Barrett say anything else to you about
4 where to put people on the schedule?
- 5 A No, that should be it, pretty much, for nights.
- 6 Q There were some other people that worked nights, right?
- 7 A Trying to think of who they were.
- 8 Q There was a Charles, wasn't there?
- 9 A No, Charles didn't come in until later.
- 10 Q How about Kayne?
- 11 A Actually Kayne, he had Kayne running the - Barrett had
12 Kayne running the drier as well, but Kayne was just learning so
13 he didn't - he was more of a utility at that time.
- 14 Q So what did Barrett say about where to put Kayne?
- 15 A He had Kayne - Barrett had Kayne in the utility. So he
16 pretty much said, Kayne's pretty much utility, but Kayne also
17 went to days. So Kayne worked days for a while too.
- 18 Q What did Barrett say about Todd G?
- 19 A He didn't have much input on Todd Gebhardt. Todd Gebhardt
20 he pretty much said he's a loader. Barrett he's just a day
21 shift loader operator.
- 22 Q What did Barrett say about Larry?
- 23 A Barrett said Larry was a utility at night.
- 24 Q Did Barrett say anything about Michael?
- 25 A Barrett had Michael doing utility and learning the drier at

1 the time, under Bobby - with Bobby.

2 Q Did Barrett say anything about someone named Cole?

3 A Barrett had Cole in the lab and load out.

4 Q Did Barrett say anything about an employee named Duane?

5 A Barrett had Duane in the load out and lab as well.

6 Q Did he say anything more about any of these employees?

7 A No, he had just gone up and checked with them in the lab at

8 night when he did his rounds. He would check with the wet

9 plant, see how that was running.

10 Q This was what Barrett said to you?

11 A Yes. Because I - when we compare notes in the morning he

12 said well the plant's been running good all night. I checked

13 that a little while ago. They're about ready to be finished.

14 Right now they're greasing the loaders. Load out went pretty

15 good last night he would tell me. He would tell me what he had

16 Mark doing in the middle of the night as far as cleaning up or

17 backhauling. He would tell if there was any maintenance that

18 was done in the dry plant as far as greasing the bucket

19 elevators, or greasing the augers or changing bearings or

20 bushings or anything like that. He would pretty much tell me

21 exactly what they did the entire night, of what he had Bobby do,

22 what he had Bart do, what he had Mark do. If they were down he

23 would say he had Mark coming up and helping do the Rotex screens

24 and stuff like that. And that helped me learn how he used his

25 people so if I ever went to nights or something, that he was

1 gone Saturday or Sunday --

2 MR. FIORETTO: This is non-responsive.

3 HEARING OFFICER GOLLIN: I think - are you talking about -

4 still about the schedule?

5 THE WITNESS: Yeah.

6 HEARING OFFICER GOLLIN: Okay.

7 THE WITNESS: So on the schedule Barrett didn't work

8 Saturdays and Sundays typically.

9 HEARING OFFICER GOLLIN: Okay.

10 THE WITNESS: So sometimes I would work on the weekends, so

11 I knew how his people functioned, and how to work - where their

12 strengths were.

13 HEARING OFFICER GOLLIN: Okay.

14 THE WITNESS: That helped me a lot. To get to know how he

15 had his people organized.

16 Q BY MR. ANDREWS: So at the time of the election, June 9,

17 were you still in training to be trained as a supervisor?

18 A Yeah, I was still in training at that time. I was learning

19 it pretty fast at that time because there was a lot thrown at

20 me. Because there was, you know, people wanting to go to days,

21 people wanting to go nights so there was kind of - there was a

22 lot of strain going on at that time.

23 Q The day of the election do you recall approaching the

24 building where the election was held?

25 A Yes.

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1 A Yes.

2 Q And he was telling you what positions they performed well.

3 A Yes.

4 Q What positions they were good at, right?

5 A Yup. Yes.

6 Q You then said during your testimony that you would compare

7 notes in the morning with Barrett Oliver.

8 A Yes.

9 Q What time period are we talking about when you would

10 compare notes?

11 A I'd come in at quarter to 6, anywhere between quarter to 6

12 to 6:30.

13 Q I'm sorry -

14 A In the morning.

15 Q - what time? Was it - what day? Was it in April? Was it

16 during that same time period, the two weeks in April?

17 A I'm thinking the end of April all the way up to - this went

18 on pretty much every day 'til he moved to days.

19 Q Okay.

20 A We would always get together in the mornings and talk about

21 what happened at night.

22 Q And what would you do with the information that he gave

23 you?

24 A Uhh, he'd just - would tell me if there was any hang-ups,

25 if there was something going on wrong in the dry plant I would

1 make sure that somebody knew about it in the daytime.

2 Q What would you do with that information, though?

3 A I would either tell Wayne or whoever was in charge at the

4 time.

5 Q Who was in charge at the time at the end of April?

6 A Brandon was there for - Brandon Crawford was there for, I

7 don't know, beginning of May or something like that when Wayne

8 showed up. Then it was Wayne.

9 Q Anyone else that you would share that with either in May or

10 June?

11 A Maintenance.

12 Q Who in maintenance?

13 A Harry. In maintenance.

14 Q Harry - does Harry have a key to the shed that he works out

15 of?

16 A Yeah, but I believe at the time when we had the MSHA

17 problem Harry wasn't there. He had gone home to Iowa at the

18 time.

19 Q Do you have a key to that area?

20 A Not to the shop area, no.

21 Q Who does?

22 A Barrett and Harry did.

23 Q Harry had a key?

24 A I believe so, yes. And the reason I think - believe that

25 is because Harry had told me, complained to me a couple times,

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1 THE WITNESS: An average day was what I would at 6:00,
2 quarter to 6, I would come in, I would go right down to the dry
3 plant, I would find Barrett, most generally he was in the dry
4 plant at the time, I would go down there and we would walk
5 around the dry plant and he would tell me everything that they
6 did that night, who he had doing what and who did - basically
7 who was in the loaders, just, you know - sometimes he would
8 switch people around. Like Mark might be in a loader for a
9 little while, he might come in there and help him do screens and
10 the Rotex's, he would tell me about trucks coming in, what they
11 had for trucks, if he went up and signed off on any loadout
12 stuff. He might tell me that well we had a couple trucks go out
13 last night that were 90 or lower and I signed off on them.

14 HEARING OFFICER GOLLIN: What does that mean, 90 or lower?

15 THE WITNESS: The grade of the sand. It has to be 90 or
16 higher. Needs to be above 90, from what I understand. Which I
17 wasn't really all that familiar with, but he would tell me. He
18 would tell me if they did - he decided to go ahead and backhaul
19 that night so there's plenty of feed sand behind the dry plant
20 so he would have maybe Mark go over and load him up in the back
21 of a - we have a Ford dump truck over there that belongs to
22 Vertex that we're allowed to use - he was the only one allowed
23 to use it at night because he was the supervisor. Nobody else
24 was allowed to drive it at that time, so he would have it to
25 where he could backhaul and he would - instead of having them

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1 HEARING OFFICER GOLLIN: Let's go off the record.

2 (Off the record.)

3 HEARING OFFICER GOLLIN: We're back on the record. Mr.
4 Andrews, are you ready to proceed?

5 MR. ANDREWS: Yes, I am.

6 REDIRECT EXAMINATION

7 Q BY MR. ANDREWS: Mr. Rainey, prior to you coming to work at
8 Proppant, who did you work for?

9 A I was a subcontractor for myself.

10 Q And what kind of work did you perform?

11 A I did the remodel work for the office, the scale shack, I
12 did the compressor shack in the dry plant, and I also did the
13 woodwork underneath the screws for the wet plant to thaw those
14 out, and the hydrosizer.

15 Q Had you ever performed work in mining before?

16 A No.

17 Q Had you ever operated loaders -

18 A No.

19 Q - such as the ones you described here?

20 A No.

21 Q Had you ever worked on a wet plant, as you've described the
22 wet plant here?

23 A No.

24 Q How about a dry plant? Had you ever worked in a dry plant
25 before?

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- 1 A No, sir.
- 2 Q Where did you learn how to do all of that?
- 3 A A combination of people. Barrett taught me quite a bit at
- 4 night, and Jeff taught me - or I mean Mike Rizzo taught me quite
- 5 a bit during the day, and I learned a little bit from Jeff too.
- 6 Q Now you testified earlier that there were some disciplinary
- 7 documents that you were involved in preparing over the course of
- 8 time from April, to May, and June and we talked about some in
- 9 July and August as well.
- 10 A Yes.
- 11 Q I think it was your testimony that there was some number of
- 12 them in April. I won't even try to recall what that number was,
- 13 but can you tell us what that number is in the April/May time
- 14 frame?
- 15 A I'm wanting to say maybe four or five. Maybe, somewhere in
- 16 there. Not exactly sure.
- 17 Q And were there more or less after the election? More or
- 18 less disciplinary writeups?
- 19 A I'd say probably around the same, maybe. There might be a
- 20 couple more. I don't know. I'm not really sure.
- 21 Q Well you were shown a number of documents by Union
- 22 attorney, and I want you to take a look at these. There was
- 23 Union 33, the disciplinary document. Would you take a look at
- 24 that?
- 25 A I've got these all mixed up now - okay.

1 MR. FIORETTO: Thank you very much.

2 MR. ANDREWS: It's all right.

3 Q BY MR. ANDREWS: So, if we could go back, what do you
4 currently for Proppant Specialists as of today?

5 A As of today. I go over production paperwork, put together
6 a report from both wet plant, the dry plant, and the lab, that
7 shows how much each plant produced, record their down time, how
8 many tons produced and shipped, and send that information to our
9 corporate office.

10 Q Do you do anything else during your day?

11 A I receive in parts, packages, take the packing list, make
12 sure that everything the plants need comes in, file that in a
13 envelope I have, and then when the mail comes in I go through
14 the invoices and match those up, put together a purchase order,
15 and mail that information -

16 MR. FIORETTO: I'm sorry. I'm so sorry. Could you -

17 MR. ANDREWS: You are - you are racing.

18 MR. FIORETTO: I'm not trying to disrupt your thought.

19 THE WITNESS: I'm sorry. Sorry. Understand completely.

20 After I receive in the parts I file that into a folder I have in
21 alphabetical order by vendor, when the invoices from those
22 vendors come in I match them up with a packing list, and then we
23 send the purchase order to our corporate office.

24 Q BY MR. ANDREWS: What else do you do?

25 A Umm - I do bill of ladings for the trucks that ship, so we

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1 have four trucks that will ship, the weight ticket information,
2 the testing information, are all compiled in one composite. I
3 take that information, fill out where the destination was with
4 the PO and send that to our corporate office.

5 Q Do you perform any other functions?

6 A Answer the phone.

7 Q Do you perform any human resources functions?

8 A The only thing I do is send paperwork to our corporate
9 office.

10 Q Do you perform any typing tasks for anyone?

11 A Occasionally somebody might ask me to post a note and I'll
12 give it to them to put up.

13 Q In assembling the production reports as you've just
14 described a moment ago -

15 A MmmHmm.

16 Q - can you walk us through how that happens? How do you do
17 that?

18 A The wet plant and dry plant reports are either turned in to
19 a mailbox we have outside the office at the beginning - or, I'm
20 sorry, the end of each shift. If they don't come in then I go
21 down to whatever respective plant and get them.

22 Q And how do you go about getting down there?

23 A Put my hard hat and safety glasses on, and jump in my truck
24 or walk, and go down to the dry plant or wet plant and get the
25 information. Also, if it's missing any information, sometimes

1 they forget to write down tons produced or what their down time
2 was, I'll go down and get that information so I have it for the
3 report.

4 Q And how do you get that information?

5 A Talk to the people working?

6 Q And that's how you obtain the information for the report?

7 A That's correct.

8 Q If something was left off the report.

9 A Yup. From there I would total up between the two shifts
10 for each plant, the total number of tons produced, how many
11 working hours they had so I know how much down time there was,
12 and how many people were in each plant on that shift. Total it
13 up for a 24 hour period and enter that into a spread sheet that
14 shows the data for month to date, year to date, for each plant.

15 Q How often do you interact with the workers who are out
16 there at the wet plant and the dry plant?

17 A On a daily basis. If I'm not down at the plants I have a
18 two-way radio that I can communicate with them and ask
19 questions. If a pallet of something comes in on a truck, I
20 can't unload it, I need a fork truck, I may have them ask
21 someone to come unload that for us.

22 HEARING OFFICER GOLLIN: How much time in a given day, on
23 average, do you spend communicating with people in the two
24 plants?

25 THE WITNESS: Out of a 12 hour day, depending on the day,

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1 hour or two.

2 HEARING OFFICER GOLLIN: Okay.

3 Q BY MR. ANDREWS: Of all these tasks and functions that
4 you've just described for us, could you go through and give us
5 percentage of your total day that's spent on each of these
6 tasks, and we won't make you do the math, if we're not exactly
7 at 100 we'll understand, but if you could assign a percentage of
8 your day, a rough percentage, of the amount of time that you
9 spend on the tasks that you just described.

10 A Okay. My day starts off the production information and I
11 would say that takes 20 to 25 percent of my time in a day.
12 Receiving takes place throughout the day. Whenever UPS, FedEx,
13 a trucking company, anybody comes in, so that part would be, you
14 know, could be 5 to 10 percent depending on what we have coming
15 in that day, once the mail comes in, going through the mail,
16 opening it up, putting the receipts, the receipt tickets we have
17 with the bill, getting all that ready to go to corporate is
18 probably 35 to 40 percent of the day. Bill of lading takes up,
19 I don't know, 20, 25 percent. That's time consuming.

20 HEARING OFFICER GOLLIN: Sorry, what was the percentage
21 again?

22 THE WITNESS: 20 to 25.

23 HEARING OFFICER GOLLIN: Okay.

24 THE WITNESS: That's -

25 HEARING OFFICER GOLLIN: That's fine.

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- 1 Q BY MR. ANDREWS: And then you mentioned a couple of other
2 tasks that you - for instance, you ship something out to human
3 resources. What percent of your time is spent doing that?
- 4 A Very little. I get very little paperwork in. I just scan
5 it in and email it. So 1 to 2 percent. I don't really have
6 much to do with that. HR is all in our Texas office.
- 7 Q Okay. And the occasional typing task, what percent of your
8 time do you spend on that?
- 9 A Minimal. I wouldn't even - maybe 1 percent, if that. Not
10 even that per day, really.
- 11 Q How about preparing schedules, do you assist in preparing
12 schedules?
- 13 A They give me the approved schedule and just type it in,
14 this piece of paper.
- 15 Q And how long does that take you?
- 16 A Oh, maybe half an hour.
- 17 Q Is that every day?
- 18 A No, every - could be three to four weeks because they're -
- 19 Q So approximately once -
- 20 A - spread out. Once a month. Yeah, it doesn't take very
21 long.
- 22 Q And what you're described for us is a work, an average work
23 day, as of the month of August 2011.
- 24 A Correct.
- 25 Q Now I would like you to describe your average work day in

- 1 the month of April of 2011.
- 2 A Okay. Probably about the same. April - beginning of April
- 3 I was working in the lab, so I loaded trucks, did paperwork.
- 4 Towards the end of April I was in the office and doing these
- 5 described duties.
- 6 Q When you were working in the lab in April, how did that
- 7 come about? How did you know to go to the lab?
- 8 A That's where I was hired for. When I was hired in February
- 9 I was hired to work in the lab.
- 10 Q And you worked in the lab from what date to what date?
- 11 A February 7th 'til, umm, it was like maybe the 26th of April.
- 12 I can't remember for sure. It was when the previous person was
- 13 terminated. Somewhere along those lines. I don't know the
- 14 exact date.
- 15 Q And since the time that that person was terminated - was
- 16 that someone by the name of Bethany?
- 17 A That's correct.
- 18 Q Since that time have you worked in the lab also?
- 19 A Occasionally.
- 20 Q How often do you think?
- 21 A Maybe five or six times. When they needed help.
- 22 Q So from May until present you've been in the lab maybe five
- 23 or six -
- 24 A That's correct.
- 25 Q Maybe five or six shifts?

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- 1 A That's correct.
- 2 Q What is this document?
- 3 A It's a job description. For a sand plant operator.
- 4 Q Are you a sand plant operator?
- 5 A Classified as a sand plant operator so even though I was
- 6 hired to work in the lab I could help shovel sand in the dry
- 7 plant, I could moved anywhere.
- 8 MR. ANDREWS: Employer moves to admit Employer 8.1 and 8.2
- 9 into evidence.
- 10 HEARING OFFICER GOLLIN: Any objection?
- 11 MR. FIORETTO: No objections.
- 12 HEARING OFFICER GOLLIN: All right, Employer 8 is received.
- 13 (EXHIBIT RECEIVED: EMPLOYER'S 8)
- 14 Q BY MR. ANDREWS: Now currently when employees come to work
- 15 on their first day of work they're handed a packet of new hire
- 16 information, is that right?
- 17 A That's correct.
- 18 Q Who hands them that packet?
- 19 A I usually do.
- 20 Q And how do you know what to hand the new employee? Who
- 21 tells you what to put in that packet?
- 22 A Corporate. That all comes from corporate. Everything in
- 23 the packet including the cover sheet comes from our corporate
- 24 office. Those are the documents they require.
- 25 Q And do you know what documents are in a new hire packet?

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1 A Umm, most of them, but I probably won't get them all off
2 the top of my head.

3 Q Is the document I just handed you - not, of course, with
4 your signature on it - but a similar document -

5 A Yes.

6 Q - with the same wording, is that included in all of the new
7 hire packets?

8 A That's correct.

9 Q Do you have access to personnel files?

10 A Limited. The plant manager has the key to the filing
11 cabinet that they keep in their office. So if something were to
12 be needed out of a personnel file they would have to open it.

13 Q Do you have a key to the personnel files?

14 A No.

15 Q Have you ever had a key to the personnel files?

16 A No.

17 MR. ANDREWS: I have no further questions of this witness.

18 HEARING OFFICER GOLLIN: Cross?

19 MR. FIORETTO: Wow. Okay. Hi.

20 THE WITNESS: Hi.

21 MR. FIORETTO: I will attempt to speak slowly as well
22 because I have a tendency to speak rather quickly so if you
23 don't understand my question or if I'm going too quickly please
24 don't hesitate to interrupt me or ask me to rephrase it, okay?

25 THE WITNESS: Okay.

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1 Or let me be more specific, when you took over in April or in
2 early May, were there any duties that you know that she
3 performed that you did not perform?

4 THE WITNESS: She typed - for the safety manager she typed
5 all the safety information. That's the only thing I really know
6 of because I don't really know what she did because I wasn't up
7 there full time.

8 HEARING OFFICER GOLLIN: Okay. Did someone else do that?

9 THE WITNESS: No.

10 HEARING OFFICER GOLLIN: Was that like a one time thing
11 because you guys were just starting to get up and running?

12 THE WITNESS: I have no idea.

13 HEARING OFFICER GOLLIN: Okay.

14 THE WITNESS: I honestly don't.

15 HEARING OFFICER GOLLIN: All right. But to the extent,
16 there's not anything else that you're aware of that you're doing
17 that - that you're not doing that she did?

18 THE WITNESS: Not that I'm aware of because I don't know
19 what - everything she did. I was not up there.

20 HEARING OFFICER GOLLIN: Okay. And I'm going to ask a
21 similar question which you're probably going to have a similar
22 answer to, is there anything that you do that she did not do?

23 THE WITNESS: The bill of lading.

24 HEARING OFFICER GOLLIN: The bill of lading.

25 THE WITNESS: Yeah.

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1 HEARING OFFICER GOLLIN: Who did that before?

2 THE WITNESS: It wasn't being done before. When I started
3 in February we had just started to ship product.

4 HEARING OFFICER GOLLIN: Because that's when - recently when
5 the dry plant started operating.

6 THE WITNESS: That's correct. And I was asked to do the
7 bill of lading because I'm in the lab and I understood the
8 whole process, and understood the trucks, and so from the get go
9 I was the one doing them. Rebecca Campbello does them part-time
10 now too.

11 HEARING OFFICER GOLLIN: Okay.

12 THE WITNESS: Because she's in the lab.

13 HEARING OFFICER GOLLIN: Okay. Any follow up redirect?

14 MR. ANDREWS: Yes.

15 REDIRECT EXAMINATION

16 Q BY MR. ANDREWS: Union Exhibit 30, if you could take a look
17 at that. I just want to - now this is the document that was
18 sent to you from Ron Jordan, and Ron Jordan is at the corporate
19 headquarters, is that right?

20 A That's correct.

21 Q And Wayne Dailey, he's located in - at the Oakdale
22 facility, is that right?

23 A Correct.

24 Q And Dae Locklear, is that Dae Locklear?

25 A Yes.

- 1 A It was mostly April. I want to say I went to nights either
2 the beginning or after the first week of April and worked there
3 through the beginning of May I think.
- 4 Q Okay.
- 5 Did you report to anyone on nights?
- 6 A Wouldn't really say I reported to anyone on a daily basis.
7 If the plant was down, yes. If the plant was running, I just
8 went to look at the schedule, see what I'm scheduled to do and
9 just started doing my job.
- 10 Q In April, you just looked at the schedule?
- 11 A Yes. And if there was no schedule, which I believe in
12 April, there was always one, but if there wasn't at the
13 beginning, I would have just asked the supervisor at the time or
14 the plant manager what to do, whoever was there.
- 15 Q Okay.
- 16 And then when you were working nights, who was the
17 supervisor?
- 18 A Barrett.
- 19 Q Barrett?
- 20 A Oliver.
- 21 Q How did you know that Barrett Oliver was the supervisor?
- 22 A As fore-mentioned, it was on the schedule. John Rice, when
23 I was hired, had made it perfectly clear multiple times that at
24 the time when I was hired, Mike Rizzo was the day time
25 supervisor and Barrett Oliver was the night time supervisor.

1 And then when I was switched to nights, he was always -- he was
2 always usually mostly supervising the dry plant and then he
3 would go back and forth between both plants throughout the night
4 and supervise.

5 Q Okay.

6 And did Barrett Oliver tell you what to do when you were
7 working with him?

8 A At times, yes.

9 Q And what would he tell you?

10 A There was a time there for -- plant was down, we were being
11 visited by MSHA and he told me -- we were all down at the wet
12 plant and we were going to start at the wet plant, do all the
13 maintenance and move to the dry plant. At the wet plant, he
14 told me -- I was the only one signed off on the Genie Lift at
15 the time --

16 MR. FIORETTO: I'm sorry.

17 Can you ask the witness to please slow down.

18 HEARING OFFICER GOLLIN: Yes.

19 The attorneys are taking notes.

20 THE WITNESS: Okay.

21 HEARING OFFICER GOLLIN: And in order for them to be able
22 to ask you questions based upon what your testimony is, they
23 need you to be able to speak at a rate in which they can sort of
24 follow along with their note-taking.

25 THE WITNESS: Okay.

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1 HEARING OFFICER GOLLIN: Thanks.

2 THE WITNESS: We all went down to the wet plant. He told
3 me to get in the Genie Lift and grease the wet plant, which
4 would be all the head pulleys and tail pulleys on the belts and
5 so forth.

6 For the other times where -- I don't know dates, but he
7 would tell me to get in the loader if somebody as late, didn't
8 show up, I would run loader, even though I was not scheduled to
9 do so. That's really -- then I guess going back to the day when
10 he told me to grease, after that, he had sent me down to the dry
11 plant and told me to clean, starting at the top level, working
12 my way down. And then, after that, there's a company truck
13 works the plant -- he gave me and another person, Bob St. Clair,
14 permission to take the truck. At the time, we were setting up
15 hangers for tire trucks to sit in the parking lot, and we used
16 the truck to go back and forth, hauling from shop.

17 HEARING OFFICER GOLLIN: What are "hangers?"

18 THE WITNESS: Basically, we took a bucket, put a 4 by 4 --
19 2 by 4 across the top and put sand in there so it would stand.

20 HEARING OFFICER GOLLIN: So this is where they -- they
21 would know where to park the trucks?

22 THE WITNESS: No, we would take another 4 by 4 this long
23 and then -- two of them -- and chain them together and put dry
24 holes -- make it one, use them to chock our tires and we would
25 hang them by the chain on the -- so, they would be where you

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1 parked, but it wasn't really to tell you where to park.

2 HEARING OFFICER GOLLIN: Okay, all right.

3 Q BY MR. ANDREWS: And by "chocked tires," can you explain
4 what you mean?

5 A Proppant Specialists -- one of the main safety rules is any
6 time you are out of your vehicle or any piece of equipment you
7 may be running at the time needed to be shut off, keys out of
8 it, if it's your personal vehicle, in park and the tires need to
9 be chocked with something that goes at least up to the bottom of
10 the rim. We were all pretty much given our own, you know,
11 chocks that we used at first. And, eventually, once more people
12 got hired, we needed to make more, so that's what we were doing.

13 Q All right.

14 When you were working on the nights and reporting to
15 Barrett Oliver, where would you get the assignment from him for
16 that night when he would tell you where to go? Where would that
17 happen?

18 A Dry plant control room.

19 Q Okay, was anyone else present?

20 A Sometimes, yes; sometimes, no.

21 Q Okay.

22 A It just depended what I was being assigned, and if everyone
23 else had already been assigned or --

24 Q Would Barrett check on you at other times during the night?

25 A Yes.

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1 Q Or is that --

2 A Check on my, yes. Mostly, I was in the loader, like I
3 said, when I was working on nights, so he would a lot of times
4 just kind of talk to me over the radio, tell me -- you know, ask
5 me if I need a break, you know, and tell me what to do or what
6 he was doing, if he would get in another loader and help or
7 something.

8 Q Did Barrett ever talk to you about the union?

9 A Are you talking pre-vote?

10 Q Yes, before the election.

11 A I've got to think about this a little bit.

12 Definitely talked to me about the union I believe one time
13 -- two times pre-vote; once was actually the night when I went
14 back to -- when we were -- at the end of the night, everything
15 was pretty much done and we were getting ready to go home early.

16 MR. FIORETTO: Do we have a time period?

17 THE WITNESS: It was I want to say like April 12th. It was
18 early to mid-April, might have been my third or fourth night on
19 nights. He told me -- kind of asked me if I knew anything about
20 the Local 139. I said "no." At the time, that was the first I
21 had ever heard of the whole situation, and I kind of blew or
22 brushed him off. He told me I should look into it, there was
23 good benefits, good -- they would raise our pay significantly.
24 And, at first, I kind of brushed him off, kind of stayed away
25 from that. I didn't really know if I was going to get myself

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1 "he" when you said "He told me to get on the Genie Lift and he
2 told me to do this or that," who were you referring to when you
3 said "he"?

4 A Barrett Oliver.

5 Q All right.

6 MR. ANDREWS: I have no further questions.

7 HEARING OFFICER GOLLIN: When you say that Mr. Oliver asked
8 you or instructed you to go on the Genie Lift, I think you
9 previously testified that you were the only person trained to
10 operate the Genie Lift there at the time?

11 THE WITNESS: Yes.

12 HEARING OFFICER GOLLIN: Okay.

13 THE WITNESS: And so he was kind of organizing who could do
14 what, where they should be. That was right after we had hired a
15 couple of new people, so there was only a couple experienced
16 people on the shift at the time.

17 HEARING OFFICER GOLLIN: Okay, and I also believe that you
18 testified that he had you on a particular day work on a loader,
19 is that correct? Am I recalling your testimony correctly?

20 THE WITNESS: Yes.

21 HEARING OFFICER GOLLIN: Or he moved you over to a loader?

22 THE WITNESS: Temporarily, for part of the shift. I
23 believe it was Mark at the time was late and called in, said he
24 was going to be late. Barrett then -- I was scheduled to run
25 the burner. Barrett told me to go get in the loader and

1 G-E-L.

2 DIRECT EXAMINATION

3 Q BY MR. ANDREWS: Mr. Fogel, who are you employed by?

4 A The International Union of Operating Engineers, Local 139.

5 Q And how long have you been employed with that employer?

6 A About 7 and ½ years.

7 Q Did you ever meet with any of the employees who work at
8 Proppant Specialists at the Oakdale facility?

9 A Yes.

10 Q And on what occasions did you meet with those employees?

11 A They were off-the-clock times.

12 Q And when was that?

13 A In a period of 8 to 10 months.

14 Q Starting --

15 A I couldn't give you an exact date. I have met various
16 employees through the time period.

17 Q And all of your meetings were held off Oakdale -- the
18 Oakdale facility?

19 A Correct.

20 Q Did you ever receive any tape recordings from any of the
21 employees who work at Proppant Specialists?

22 A No, but I did hear some.

23 Q And when did you hear tape recordings?

24 MR. FIORETTO: I'm going to raise an objection: it's
25 irrelevance.

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1 HEARING OFFICER GOLLIN: What is the relevance?

2 MR. ANDREWS: I think we'll see in a moment.

3 There was a subpoena issued. Also, I think we're going to
4 find out that some of these tapes were probably created by some
5 of the other witnesses that --

6 HEARING OFFICER GOLLIN: All right, I'm going to allow you
7 a certain amount of leeway, but I'm going to ask that you get to
8 your point.

9 MR. ANDREWS: Yes.

10 HEARING OFFICER GOLLIN: Okay.

11 Q BY MR. ANDREWS: So who provided those tapes to you?

12 A The employees.

13 Q And which employees?

14 THE WITNESS: Do I have to disclose that?

15 MR. FIORETTO: Again -- what the relevancy is. He doesn't
16 have them in his possession.

17 HEARING OFFICER GOLLIN: You are arguing relevancy. I'm
18 going to ask him what the specific relevance is.

19 I mean, I've heard two things from you. You said there's
20 an issue with regards to subpoena. If you are contending that
21 there was non-production with the subpoena, that's something
22 that you probably want to let me know earlier than right now.
23 Secondly, if there's an issue --

24 MR. ANDREWS: We didn't know if there was tapes until we
25 put him on, so --

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1 anyone refer to Barrett Oliver as a supervisor was at the pre-
2 election hearing?

3 MR. FIORETTO: I'm just going to raise an objection as to
4 the relevancy of this line of questioning.

5 HEARING OFFICER GOLLIN: I'm going to allow the questioning
6 to -- I mean, I'm troubled -- I'm not troubled. I'm having
7 difficulty seeing the relevance, but I'm going to allow a
8 certain amount of the questioning because we're talking about
9 the point in time of the election for which there are certain
10 alleged objectionable comments. I'll see where this is going.

11 THE WITNESS: Can you repeat that, please?

12 MR. ANDREWS: Yes.

13 Q BY MR. ANDREWS: Is it your testimony that the first time
14 you ever heard that anyone was referring to Barrett Oliver as a
15 night shift supervisor was at the pre-election conference?

16 A Yes.

17 Q Did you have a conversation with Barrett Oliver at the time
18 of the pre-election conference regarding that issue?

19 A Yes. The Board agent made a statement to us after Barrett
20 showed up, that the Employer -- excuse me, the counsel for the
21 Employer was going to object if we chose to have Barrett Oliver
22 as our observer.

23 Q Did he tell you the basis of the objection?

24 A He said you guys were claiming him as a supervisor.

25 Q And did you talk with Barrett Oliver about that?

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- 1 A No, I spoke to our legal counsel.
- 2 Q So you had no further conversation with Barrett Oliver
- 3 about that?
- 4 A No.
- 5 Q All right.
- 6 Now did you have any participation in the creation of a
- 7 sign that was placed across from the voting -- the building
- 8 where the voting took place?
- 9 A Yes.
- 10 Q And what was your participation?
- 11 A I put it up and ordered it.
- 12 Q And how many signs were there?
- 13 A Two.
- 14 Q And what did the sign say?
- 15 A "The community supports Local 139, vote 'yes'."
- 16 Q Did you draft "The community supports Local 139"? Did you
- 17 choose that wording?
- 18 A Yes.
- 19 Q And what does that mean?
- 20 MR. FIORETTO: Objection: relevance.
- 21 HEARING OFFICER GOLLIN: Well, I mean, it's --
- 22 MR. FIORETTO: If they were supposed to be threatening, I'm
- 23 sorry, to the employees of the bargaining unit members, we've
- 24 heard testimony from them what his intention was in terms of
- 25 what he meant to convey. I don't think it's relevant to the --

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C E R T I F I C A T E

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This is to certify that the attached proceedings
before the NATIONAL LABOR RELATIONS BOARD, REGION THIRTY

In the Matter of:)
)
PROPPANT SPECIALISTS, LLC,)
)
)
Employer,)
)
and) Case 30-RC-6783
)
INTERNATIONAL UNION OF)
OPERATING ENGINEERS,)
LOCAL 139, AFL-CIO,)
)
Petitioner.)

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Date: August 31, 2011
Place: Tomah, Wisconsin
were held according to the record, and that this is the
original, complete, true and accurate transcript which has
been compared to the reporting or recording accomplished at
the hearing, that the exhibit files have been checked for
completeness and no exhibits received in evidence or in the
rejected exhibit file are missing.

Christopher Walls
Official Reporter

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BEFORE THE
NATIONAL LABOR RELATIONS BOARD

In the Matter of:)	
)	
PROPPANT SPECIALISTS, LLC,)	
)	
)	
Employer,)	
)	
and)	Case 30-RC-6783
)	
INTERNATIONAL UNION OF)	
OPERATING ENGINEERS,)	
LOCAL 139, AFL-CIO,)	
)	
Petitioner.)	

The above entitled matter came on for hearing pursuant to adjournment, before Andrew S. Gollin, Hearing Officer, in the Council Chambers of the Tomah Municipal Center, Second Floor, 819 Superior Avenue, Tomah, Wisconsin, on Thursday, September 1, 2011, at 8:21 a.m.

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- 1 Q I just want to go back -- and we're just about finished,
2 Ms. Haskins. I want to go back when you worked the night shift.
3 Again, after your training, you worked predominantly the night
4 shift, correct?
- 5 A Yes.
- 6 Q When you reported to work, did anyone have to tell you what
7 to do?
- 8 A No.
- 9 Q Did you have -- did Barrett Oliver with with -- work the
10 night shift during some of the times that you worked the night
11 shift?
- 12 A Yes.
- 13 Q Do you recall Barrett Oliver ever having to send you and
14 other employees home during your shift before your shift ended?
- 15 A Yes.
- 16 Q Okay, do you recall first of all when that happened?
- 17 A I believe in June.
- 18 HEARING OFFICER GOLLIN: Did it happen more than one time?
- 19 THE WITNESS: No.
- 20 HEARING OFFICER GOLLIN: So it was one time?
- 21 THE WITNESS: One time.
- 22 Q BY MR. FIORETTO: And I want to talk a little bit about the
23 specifics. Do you recall first of all when you first learned
24 it, what time in your shift you first learned that there was a
25 problem or an issue?

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- 1 Q BY MR. ANDREWS: And who did you argue with?
- 2 A Let's see, I argued with Barrett, Mark, Bobby.
- 3 Q And is it your testimony that no one took the lead in
- 4 telling everyone what to do during this repair project?
- 5 A No.
- 6 Q Who took the lead?
- 7 A Barrett took the lead as far as saying, "This needs to be
- 8 done," and then called everyone in to do it.
- 9 Q Now you testified earlier that when you would show up for
- 10 work for the night shift, you would just know what to do.
- 11 A There was communication between day shift and night shift
- 12 in the lab.
- 13 Q And did anything ever happen on the night shift where you
- 14 would have to check with anyone else as to what to do?
- 15 A Occasionally, yes.
- 16 Q And could you describe any of those occasions?
- 17 A Basically, if there was any issue whatsoever, Rebecca told
- 18 me to call her regardless of time.
- 19 If there was an issue of samples not coming out correctly,
- 20 especially with loadouts on the trucks, I would notify whoever
- 21 was in the ops room. I'd also notify Barrett.
- 22 Q Why would you notify Barrett?
- 23 A He was the lead person on nights.
- 24 Q Did you ever have to have Barrett's permission to send a
- 25 load if the load wasn't exactly per the spec of 90 percent?

- 1 A Yes.
- 2 Q And did you do that?
- 3 A Yes.
- 4 Q You didn't have authority to send that load without
- 5 Barrett's permission, is that right?
- 6 A True.
- 7 (EXHIBITS MARKED: EMPLOYER EXHIBIT NO. 9.1 AND 9.2.)
- 8 (Witness proffered the document.)
- 9 Q I want to show you what we've marked as Employer Exhibit
- 10 9.1 and 9.2
- 11 Now on April 2nd, you were working in the lab, is that
- 12 right? April 2nd --
- 13 A Well, I'll agree with you, yes.
- 14 Q And when you perform a test, you type your name in when it
- 15 says "tested by," so here where it says "Sandy" -- would that
- 16 mean that you performed this test?
- 17 A Yes, normally, yes.
- 18 Q And do you know whose handwriting that is there on the
- 19 side?
- 20 A On the first sheet?
- 21 Q Yes.
- 22 A That's Duane's. My handwriting is on the second sheet.
- 23 Q Now the -- under "percent total," there's a number of 88.28
- 24 percent, is that right?
- 25 A That's correct.

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1 Q And your directions are to send a load only if it's 90.00
2 percent, is that correct?

3 A That's correct.

4 Q So did you have to ask Barrett in order to send this out-
5 of-compliance load?

6 A Yes.

7 Q And is that why it says on here, "Sent per Barrett"?

8 MR. FIORETTO: Objection. Calls for speculation.

9 HEARING OFFICER GOLLIN: Yes, she can't testify as to what
10 Duane -- why Duane wrote what he wrote. She obviously can
11 testify about why she wrote what she wrote then on the next
12 page.

13 Q BY MR. ANDREWS: Did you seek Barrett's permission to send
14 this particular load?

15 A I will say one of us did. Duane and I must have worked
16 that night together.

17 Q But you performed the test, is that right?

18 A He could have performed the test, I could have performed
19 the test. When you're working as --

20 HEARING OFFICER GOLLIN: Well, it says, "Tested by" and it
21 says "Sandy."

22 THE WITNESS: When you're working as a team, I may have
23 done the sieving, he may have entered the information or vice
24 versa. It was never an issue when you're working as a team as
25 to whose name was "tested by."

1 Q BY MR. ANDREWS: But on the second page, that is your
2 handwriting, right?

3 A Yes, it is.

4 Q Where it says -- and you wrote -- what did you write there?

5 A I wrote "Sent per Barrett."

6 Q So did you ask Barrett and then write this down after you
7 asked Barrett?

8 A All I can tell you is one of us asked him, whether it was
9 myself or Duane, I can't tell you, I don't remember.

10 Q But when you wrote down, "Sent per Barrett," you understood
11 that you had permission from Barrett, is that right?

12 A Oh, yes.

13 HEARING OFFICER GOLLIN: Do you have any knowledge as to
14 whether or not Barrett contacted anyone prior to giving you
15 permission?

16 THE WITNESS: At that time, no.

17 HEARING OFFICER GOLLIN: Okay, I asked a question that
18 could give rise to two answers that could be different things.

19 Do you know -- do you personally know if Barrett contacted
20 anyone to get permission before allowing that load to go?

21 THE WITNESS: No.

22 HEARING OFFICER GOLLIN: You don't know?

23 THE WITNESS: I don't know.

24 HEARING OFFICER GOLLIN: Okay.

25 MR. ANDREWS: Employer moves or entering exhibit Employer

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1 9.1 and 9.2 into evidence.

2 MR. FIORETTO: I have an objection. I don't think that a
3 proper foundation has been laid, at least not to the first page.

4 HEARING OFFICER GOLLIN: I'm going to receive it over the
5 objection. I think that she has identified it, she recalls the
6 incident, she has been giving testimony on it, she can identify
7 Duane's signature, she can identify her own signature. I'm
8 going to receive it.

9 (EXHIBITS RECEIVED: EMPLOYER EXHIBITS 9.1 AND 9.2.)

10 Q BY MR. ANDREWS: Now, in fact, the next day when you came
11 back to work, you had a conversation with Rebecca about this
12 particular load, is that right?

13 A I could have, yes.

14 Q In fact, didn't Rebecca tell you, "You should have checked
15 with me about this load"?

16 A I don't recall, but it could have happened.

17 Q And, in fact, Rebecca was somewhat upset that no one had
18 checked with her is what she said to you, isn't that right?

19 A It's possible.

20 Q And didn't you say to Rebecca, "Well, Barrett Oliver is my
21 night supervisor I answer to him"?

22 A I have told her that, yes.

23 Q Now there was a lot of testimony about your -- about the
24 fact that you have a restriction, a medical restriction that
25 prevents you from working at this time, is that right?

- 1 Q You continued to work the night shift, beginning in
2 January of 2011, correct?
- 3 A Yes.
- 4 Q And are you working the night shift currently?
- 5 A No.
- 6 Q You switched to days at some point, correct?
- 7 A Yes.
- 8 Q Do you remember when you switched to days?
- 9 A Shortly after the -- I believe -- was that July 9th --
- 10 Q Shortly after the Union election?
- 11 A Yes.
- 12 Q Okay, we will get to that in a moment. But I want to try
13 and focus our discussion, for the time being, on the events of
14 January 28, 2011 forward. You didn't attend any special
15 meetings as a result of being named a crew leader, correct?
- 16 A No.
- 17 Q You didn't get any special training?
- 18 A No.
- 19 Q You weren't given an office, were you?
- 20 A No.
- 21 Q You weren't involved in any type of work scheduling,
22 correct? You didn't prepare any schedules?
- 23 A (No response.)
- 24 Q I am sorry, you have to say yes or no.
- 25 A No, sorry.

- 1 Q Okay, and who taught them, or who trained them to do sieve
2 analysis testing?
- 3 A On nights, most of the training for sieve analysis was
4 done by Bobby Shaw.
- 5 Q Do you know who decided if those Manpower employees were
6 needed to work?
- 7 A No, I don't.
- 8 Q Did you ever inform Mr. Crawford and/or Mr. Rainey, at any
9 time from January of 2011 until the time you went onto days,
10 that a Manpower employee was needed to work a specific
11 schedule?
- 12 A No.
- 13 Q That they should be retained as permanent employees?
- 14 A No.
- 15 Q From January of -- I am sorry -- January 28, 2011 until
16 the time you worked days, did you ever have occasion to let the
17 employees that worked the night shift leave the shift early?
- 18 A Yes.
- 19 Q They usually end at 6 a.m., right?
- 20 A Yes.
- 21 Q So you had occasion to let them leave early, right?
- 22 A Yes.
- 23 Q Okay, tell us, first of all, when that took place?
- 24 A That would have been mid-June, I believe, and --
- 25 Q Let me interrupt you just for a moment. I am only

1 day, also listed right here as a Wet Plant-Operator, Wet Plant-
2 Operator, and probably a few more on there.

3 HEARING OFFICER GOLLIN: What are you referring to, for
4 the record?

5 THE WITNESS: My name is on there more than once. I did
6 the work everybody else did.

7 MR. PAUTSCH: Hearing Officer --

8 HEARING OFFICER GOLLIN: Union exhibit -- what is the
9 Union exhibit?

10 THE WITNESS: This would be 57.

11 HEARING OFFICER GOLLIN: Okay.

12 MR. PAUTSCH: Okay.

13 Q BY MR. PAUTSCH: But there is no doubt that you are listed
14 as a production supervisor.

15 A Listed, yes.

16 Q And my question was -- and my question was: Did you ever
17 complain to anybody that "Hey, that's not me, I am not a
18 production supervisor"?

19 A It is what they put down.

20 Q It's -- and my question is did you ever complain about
21 that to Mr. Dailey?

22 A Why complain? No, I did not.

23 HEARING OFFICER GOLLIN: This could be very, very easy for
24 you to do. He is asking you a question, it is a yes or no
25 question. So if there is a follow-up question, he will ask it.

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1 they changed a bunch of the locks and stuff a little after
2 that.

3 Q BY MR. PAUTSCH: One other occasion in the spring that you
4 let Todd into the office with your keys?

5 HEARING OFFICER GOLLIN: Can you be specific as to which
6 Todd?

7 MR. PAUTSCH: Todd Rainey.

8 THE WITNESS: I don't ever recall ever letting him into
9 the office.

10 Q BY MR. PAUTSCH: So you are testifying today that that
11 didn't happen?

12 A I never opened the door for him to get in there.

13 Q Okay. Have you ever, in conversations with anybody at
14 Proppant, employees, managers, executives from parent company,
15 referred to yourself as a supervisor?

16 A I'm sure there have been people.

17 Q That you referred to yourself as a supervisor?

18 A That I referred to myself as a supervisor?

19 Q That's right.

20 A No.

21 Q As a crew leader?

22 A Yes.

23 Q And who was that that you referred to yourself as a crew
24 leader?

25 A Well, talking to Marty and Mike when we first got the

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- 1 Q Was he a crew leader, too?
- 2 A Yes.
- 3 HEARING OFFICER GOLLIN: Who was that?
- 4 THE WITNESS: That would have been Mike Rizzo. He had
- 5 been there longer than me. I don't know how much he made.
- 6 Marty Pont had the same position as me, I don't know how much
- 7 he made.
- 8 MR. PAUTSCH: One second.
- 9 (Pause.)
- 10 Q BY MR. PAUTSCH: Do you recall -- let's go to -- I will
- 11 change topics. Do you recall the day of the election?
- 12 A Yes.
- 13 Q Do you recall going to a pre-election conference held on
- 14 that day?
- 15 A To what?
- 16 Q Pre-election conference that day? Okay, you have the
- 17 election that starts at 5:00, do you remember a conference
- 18 where people met to discuss the ground rules for the election.
- 19 Nice gentleman came in from the NLRB to conduct the election.
- 20 A Yeah, I remember that part of it.
- 21 Q Okay. And, at the election, you already testified you
- 22 acted as the Union's election observer, is that correct?
- 23 A Yes.
- 24 Q Do you remember what the nice gentleman from the NLRB said
- 25 about you acting as an election observer on that day?

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1 A I believe it was stated that there was a possible conflict
2 with me being the observer.

3 Q Did he mention that he was reading something from his
4 supervisor? Did he -- like a checklist, didn't he, and he was
5 reading from that, and advising you that there was some sort of
6 instruction he had received from his supervisor?

7 A I believe there was something like that, yes.

8 Q Because he had like -- he puts together -- he told you he
9 was like a music teacher, a retired music teacher, and he puts
10 together this sort of a checklist. He likes to work with a
11 checklist, do you recall that?

12 A Yes, he had a checklist.

13 Q And on there he said, "I got this instruction from my
14 supervisor at the Regional Office," is that correct?

15 A I can't say for sure exactly what his words were, but
16 something along that, I could imagine, yes.

17 Q Okay, and did you leave the room, then, to go talk with
18 Mr. Fogel? First, isn't it true that you -- Mr. Fogel went
19 downstairs to make a phone call, and then you went out to talk
20 to Mr. Fogel, is that correct?

21 A I believe I stayed in the room, and he went and made a
22 phone call, or whatever, and then came back up and said that he
23 was going to go ahead and -- that they were going to go ahead
24 and let me do it.

25 Q Okay, you didn't leave the room then?

1 Q BY MR. PAUTSCH: Okay. Do you recall the day before that
2 election, anything unusual happen on that day involving a
3 company meeting?

4 A I believe there was a meeting up in the shop, yeah.

5 Q And, you say "up in the shop," was there also some sort of
6 a picnic or a barbecue that was held?

7 A Yeah, it was kind of a -- like cook-out, company cook-out
8 meeting thing.

9 Q Where was that held?

10 A In the shop.

11 Q When you say "the shop" --

12 HEARING OFFICER GOLLIN: Which shop, yes.

13 THE WITNESS: Oh, it's the maintenance shop, it's a large
14 pole building over by -- on the corner.

15 Q BY MR. PAUTSCH: It is right near the farmhouse, isn't it
16 --

17 A Yeah.

18 Q -- the office building -- the office?

19 A Well, yeah, it is north of the barn that's on the
20 property.

21 HEARING OFFICER GOLLIN: When was that in relation to the
22 election?

23 THE WITNESS: Day before.

24 HEARING OFFICER GOLLIN: Okay, so the election was on June
25 9th, you are saying that it was on June 8th?

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1 THE WITNESS: Yeah, it was the day before, I think.
2 HEARING OFFICER GOLLIN: Just making sure.
3 MR. PAUTSCH: And I am going to show you what's been -- a
4 better one.
5 MR. FIORETTO: Thank you. Should we -- are we going to
6 substitute this with the original one?
7 MR. PAUTSCH: Yes.
8 MR. FIORETTO: Do you know what the original one is?
9 MR. PAUTSCH: Well, we'll leave those in, we'll just make
10 another one.
11 HEARING OFFICER GOLLIN: Yes, just --
12 MR. FIORETTO: Okay.
13 HEARING OFFICER GOLLIN: -- mark this as a new exhibit and
14 move forward.
15 MR. PAUTSCH: Okay.
16 HEARING OFFICER GOLLIN: What are you marking this as?
17 MR. PAUTSCH: What's the last on we had?
18 MR. ANDREWS: This needs to be Employer 10.
19 HEARING OFFICER GOLLIN: This is 10?
20 MR. ANDREWS: Employer 10.
21 HEARING OFFICER GOLLIN: All right.
22 MR. FIORETTO: For identification?
23 MR. PAUTSCH: Yes.
24 (EXHIBIT MARKED: EMPLOYER'S EXHIBIT NO. 10.)
25 (Witness proffered document.)

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1 HEARING OFFICER GOLLIN: All right, the witness has the
2 document.

3 Q BY MR. PAUTSCH: And, Mr. Oliver, looking at this -- what
4 I have had now marked as Employer's Exhibit 10, am I accurate
5 in reading it that it says "The community supports Local 139?"

6 MR. FIORETTO: The document speaks for itself.

7 MR. PAUTSCH: "Vote yes"?

8 THE WITNESS: Yes, it does say that.

9 HEARING OFFICER GOLLIN: All right. Let me just ask him:
10 Does this photograph accurately reflect what the sign said that
11 was outside on the private property?

12 THE WITNESS: Yes.

13 HEARING OFFICER GOLLIN: Okay.

14 Q BY MR. PAUTSCH: Did you help put that sign up there?

15 A No, I did not.

16 Q Did -- do you know who did?

17 A No, I don't know. I didn't see anybody put it up. It was
18 there when I got there.

19 Q Do you have any knowledge of who put it up?

20 MR. FIORETTO: Objection as to relevance. This witness
21 has testified that he has not put it up. What is the
22 relevance?

23 HEARING OFFICER GOLLIN: He is asking him, "Do you have
24 knowledge as to who did it?" Do you know who did it?

25 THE WITNESS: I don't know who exactly put it up.

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1 HEARING OFFICER GOLLIN: When you say, "I don't know
2 exactly who put it up," do you know who put it up, and then I
3 will ask you how do you know that?

4 THE WITNESS: I don't know.

5 HEARING OFFICER GOLLIN: Okay, then that's how you answer.

6 Q BY MR. PAUTSCH: Did you ever discuss with Mr. Fogel, or
7 anybody from Local 139, putting up such a sign?

8 A I had heard that there was a possibility of one, yes.

9 Q When did you hear that?

10 A A week before the election or so.

11 Q And where did that discussion occur?

12 A Greenwood Cafe.

13 Q Have you --

14 MR. FIORETTO: Could you turn your phone off? I am sorry,
15 my apologies.

16 THE WITNESS: Oh, I am sorry, I will turn it off quick.

17 Continue?

18 Q BY MR. PAUTSCH: Who was present for that discussion at
19 the cafe?

20 A I can't remember exactly who all was there.

21 Q Was Mr. Fogel there?

22 A Yes, he was.

23 Q Was Mr. Gauf there? I am speaking of Mark Gauf.

24 A I believe so.

25 Q Was Jim Gauf there?

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- 1 A No.
- 2 Q Was Bart Billings there?
- 3 A No.
- 4 Q Was Robert Shaw there --
- 5 A Umm --
- 6 Q What?
- 7 A Yes.
- 8 Q Was Robert Shaw there?
- 9 A Yes.
- 10 Q Was Jeff Sobczak there?
- 11 A Yes.
- 12 Q And nobody said they were going to put this sign up?
- 13 A It wasn't a decided thing at that point, if that's -- I
- 14 mean, it was an "if" thing.
- 15 Q Do you know who -- do you know the name of the individual
- 16 whose land this sign is on?
- 17 A No, I don't, I don't know their name.
- 18 Q It is a neighbor, isn't it?
- 19 A I believe so.
- 20 Q But you don't know that person's name?
- 21 A No.
- 22 Q Is it -- have you heard anybody say, in the group of the
- 23 people that were at that meeting, that they knew the neighbor,
- 24 that they had talked to this neighbor?
- 25 A No.

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- 1 Q Or words to that effect?
- 2 A (No response.)
- 3 MR. FIORETTO: I am sorry, you have to say yes or no.
- 4 THE WITNESS: No.
- 5 HEARING OFFICER GOLLIN: You have got to make sure you do
- 6 that.
- 7 THE WITNESS: Sorry.
- 8 Q BY MR. PAUTSCH: In conversations amongst the employees at
- 9 Proppant, in May and June, and even going back before that, had
- 10 you heard discussion among employees of the problems that this
- 11 neighbor was having with the Proppant operation?
- 12 MR. FIORETTO: Objection, relevance.
- 13 HEARING OFFICER GOLLIN: I am going to allow the question.
- 14 THE WITNESS: Can you say that one more time, please?
- 15 Q BY MR. PAUTSCH: In conversations that you had from, say,
- 16 March through June, leading up to June 9th, had you -- do you
- 17 recall conversations that people had had regarding problems
- 18 that the company was having -- or Proppant operation was having
- 19 with this neighbor?
- 20 A I don't know what neighbors they were having problems
- 21 with, I don't know what the problems were. I don't know
- 22 anything about that, I'm not involved in it.
- 23 Q You have no knowledge of problems with the neighbors, with
- 24 the road, with the noise on the road, things like that?
- 25 A I've heard people talk about it, but I don't know who.

1 Q Well, that was actually my question, what have people said
2 about it?

3 HEARING OFFICER GOLLIN: Well, be specific. Who --

4 MR. PAUTSCH: And be specific, what --

5 HEARING OFFICER GOLLIN: -- are you talking about?

6 Q BY MR. PAUTSCH: Who has talked to you about that?

7 A Todd Rainey's talked about it. John Rice had talked about
8 it when he was there. I know we talked about it on -- a little
9 while ago, before they -- they just talked about people had
10 been complaining. I mean, I had never got details details.
11 People complained --

12 Q Did you --

13 A -- about the road, people complained about back-up alarms.
14 That was all I ever heard.d

15 Q When you drive up and down that road to get to work, it's
16 pretty bumpy and rugged, isn't it?

17 A Yeah.

18 MR. FIORETTO: Objection.

19 MR. PAUTSCH: What?

20 THE WITNESS: Yeah.

21 HEARING OFFICER GOLLIN: I am going to overrule the
22 objection. It goes -- I'm assuming this goes toward the noise
23 level, the condition of the road, the complaints of the
24 community that allegedly may or may not have happened, and
25 their basis for their objection concerning the sign.

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1 Q BY MR. PAUTSCH: I mean, the road is pretty bad to drive
2 on, isn't it, it's almost like driving on -- what the people
3 call the Burma Road, it's torn up, isn't it?

4 A It's like driving in Madison.

5 Q Like driving in Madison -- that's a good one. So the
6 road's really torn up at some points?

7 A In some spots, yeah.

8 Q And have you noticed that the -- there's quite a bit of
9 noise out and about that road?

10 MR. FIORETTO: Objection. Can we have a time frame, when
11 he's working, when he's coming to work, during the shift.

12 MR. PAUTSCH: At night.

13 THE WITNESS: At night? I never went out to the road to
14 check the noise level.

15 Q BY MR. PAUTSCH: All right, well, at some point, isn't it
16 true that the trucks stopped making deliveries and pick-ups at
17 certain times of the night? Is that true?

18 A No.

19 Q There's been no change in the operation in terms of when
20 trucks can come and go at night?

21 A There's always trucks in there.

22 Q They don't stop at a certain time of the night?

23 A No, trucks run 24-7 as long as we have rail cars.

24 Q Okay. Did anybody -- okay, let me ask you this: When you
25 were at the -- you attended the meeting that was held out in

1 front of the --

2 A Which meeting?

3 Q The -- the -- let me -- just try to --

4 HEARING OFFICER GOLLIN: Are you talking about the shop
5 meeting on June 8th?

6 MR. PAUTSCH: The shop meeting, out in front of the shop,
7 the barbecue --

8 THE WITNESS: It was in the shop.

9 Q BY MR. PAUTSCH: But people met outside as well, didn't
10 they?

11 A A few people, yeah.

12 Q When you were standing there, could you look over and read
13 the sign?

14 A No.

15 Q Standing on the front steps of the farmhouse, could you
16 read this sign?

17 A I don't know. I wasn't on the front steps of the
18 farmhouse at all.

19 HEARING OFFICER GOLLIN: During the course of your
20 meeting, this barbecue that occurred, were you present when any
21 employee said anything to you about a sign being erected across
22 the street on the adjacent property?

23 THE WITNESS: Knew it was there, yes.

24 HEARING OFFICER GOLLIN: So people made comments to you?

25 THE WITNESS: Not really, most everybody just didn't say

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1 anything about it.

2 HEARING OFFICER GOLLIN: Who spoke to you, or who did you
3 overhear speaking about the sign during the course of this
4 barbecue?

5 THE WITNESS: I just remember -- I remember walking in and
6 looking at Jeff and going, "Well, I saw the sign when I pulled
7 in," and he's like, "Yeah, I did to," and then we just kind of
8 -- we didn't talk about it.

9 HEARING OFFICER GOLLIN: All right. Did you overhear
10 anyone else make any comments, during the course of this
11 barbecue/meeting outside of the shop, about the sign?

12 THE WITNESS: No.

13 HEARING OFFICER GOLLIN: Okay.

14 Q BY MR. PAUTSCH: At any point in time, did you see Bart
15 Billings out or about this sign?

16 A No, I never saw anybody by them.

17 Q You never saw anybody over there by the signs?

18 A No.

19 Q And there's a farmhouse there, and is there a driveway
20 next to that farmhouse, got a lot of implements out there, is
21 that correct?

22 A Yeah, there's a few driveways, yeah.

23 Q But there's like a main one, and he's got his implements -
24 - did you ever see any people standing in and around there?

25 A No.

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1 A Yeah, I think he started that like in late November or
2 something.

3 Q And when did he finish that?

4 A I don't know.

5 HEARING OFFICER GOLLIN: And you were talking about 2010,
6 correct?

7 THE WITNESS: Yeah, he started in November 2010 and when,
8 exactly, he finished it, I can't exactly tell you.

9 Q BY MR. PAUTSCH: Well, it's sort of still unfinished,
10 isn't it? They're still doing things around the farmhouse --

11 MR. FIORETTO: Objection as to the relevance.

12 MR. PAUTSCH: -- isn't it -- if he knows.

13 MR. FIORETTO: No, it's to the relevance, where are we
14 going with this?

15 HEARING OFFICER GOLLIN: I will allow the question. I
16 will allow the question. I have given you latitude when you
17 examined Mr. Rainey, I am going to give him the same latitude.
18 I am going to, again, push you along to keep going with what's
19 relevant here.

20 THE WITNESS: Can you say the question again, please?

21 Q BY MR. PAUTSCH: The question was, in terms of Mr. Rainey,
22 I indicated that the house, the farmhouse, is still in the
23 process of some certain amount of renovations, isn't it?

24 A Not as far as I know. I haven't --

25 Q So you don't know when it ended, the renovations?

1 Q The question was you made the decision to call Harry as
2 well?

3 A For his experiences, yes.

4 Q And do you recall an incident where the dryer broke down,
5 and there were problems with sand that people had to walk in
6 and complained about?

7 A Oh, hot sand on the floor.

8 Q Yes.

9 A Which instance? There was hot sand on the floor every day
10 there for a while.

11 Q Well, do you recall an incident where it broke down and
12 the complaints were pretty heavy that people didn't want to
13 work in the hot sand? Do you recall a particular night? You
14 said there were a number of them, let's talk about one that
15 sticks out in your memory. What do you recall about it?

16 A I remember one day the auger stopped work and it was
17 overflowing from up by the drum and spewing out down on the
18 ground and it was hitting the wiring and stuff. And it
19 actually melted part of the electrical wiring, which starting
20 arcing off the equipment, kicked the breaker off. I ended up
21 grabbing a piece of plywood and throwing it on top of the hot
22 sand pile to get to a flip gate valve, because it was the only
23 way I could reach it without burning myself. And I flipped
24 that open to allow the sand to escape. Did that, that was one
25 instance where it happened.

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1 MR. PAUTSCH: Okay.

2 MR. FIORETTO: -- probably didn't read it, so may I have a
3 minute to read it, please?

4 MR. PAUTSCH: Yes.

5 HEARING OFFICER GOLLIN: Let's go off the record.
6 (Off the record.)

7 HEARING OFFICER GOLLIN: Let's go back on the record.

8 MR. PAUTSCH: I would like to have this marked as Employer
9 Exhibit 12 or 11?

10 HEARING OFFICER GOLLIN: I believe it's 11.

11 MR. PAUTSCH: Eleven.

12 (EXHIBIT MARKED: EMPLOYER'S EXHIBIT NO. 11.)

13 (Witness proffered document.)

14 Q BY MR. PAUTSCH: And ask you to identify what's been
15 marked as Employer Exhibit 11.

16 A Yeah, this is a confidentiality agreement.

17 Q Is that something you signed at or about the time of your
18 hire?

19 A Yes, it is.

20 Q And is that your signature on the second page?

21 A Yes, it is.

22 Q During the election campaign, so to speak, from April to
23 June, did you have occasion at any point in time to participate
24 in tape recordings of the conversations of various individuals?

25 A Yes, I did.

1 MR. FIORETTO: Again -- well --

2 HEARING OFFICER GOLLIN: Go ahead.

3 MR. FIORETTO: We will worry about Mr. Shaw at a later
4 point. Mr. Shaw isn't the one who is subject to this
5 objection.

6 HEARING OFFICER GOLLIN: I understand. I'm going to allow
7 a limited line of questioning. You will be free to develop
8 your record. I fully expect very detailed briefs in support of
9 this position, so that we can fully decide it based upon what
10 law exists.

11 All right, if you can ask the witness to return?

12 MR. PAUTSCH: Yes.

13 (Pause.)

14 HEARING OFFICER GOLLIN: Let the record reflect that Mr.
15 Oliver has returned to the hearing room, and Mr. Pautsch you
16 can resume your cross examination.

17 (WITNESS RECALLED: BARRETT OLIVER.)

18 Q BY MR. PAUTSCH: During the course of the months April,
19 May, and June, did you, yourself, act to tape any individuals
20 at the Proppant workplace?

21 A I did carry a tape recorder in my pocket, yes.

22 Q What kind of a tape recorder?

23 A Just a little digital one.

24 Q And how often, during the course of April, May, and June,
25 did you tape individuals at the workplace?

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- 1 A Well, most of the time, I walked around with it on in my
2 pocket.
- 3 Q You would walk around with it on in your pocket?
- 4 A Yeah.
- 5 Q So you would leave it on all day
- 6 A Yeah.
- 7 Q Do you have it on right now?
- 8 A No, I don't have it with me.
- 9 Q Okay. Did you make known that fact to other people in the
10 workplace, that you had a tape recorder on?
- 11 A I didn't make it a known thing, no.
- 12 Q Did anybody else know that you did that in the workplace?
- 13 MR. FIORETTO: Objection as to how other people might
14 know.
- 15 HEARING OFFICER GOLLIN: Did you tell anyone that you were
16 recording conversations in the workplace, any coworkers?
- 17 THE WITNESS: No.
- 18 Q BY MR. PAUTSCH: Did you tell Bobby Shaw?
- 19 A He knew I had one, but he didn't know what conversations I
20 recorded and what I didn't record.d
- 21 Q Did Bobby Shaw ever tell you that he recorded --
- 22 MR. FIORETTO: Objection, hearsay.
- 23 MR. PAUTSCH: -- conversations in the workplace?
- 24 MR. FIORETTO: Hearsay.
- 25 HEARING OFFICER GOLLIN: Well, it is hearsay, and you have

- 1 Q That is just a yes/no.
- 2 A Oh, well, yes, I had asked.
- 3 Q You didn't go to Todd Rainey to ask to be moved to the day
- 4 shift, did you?
- 5 A No.
- 6 MR. ANDREWS: I have no further questions.
- 7 MR. FIORETTO: May I?
- 8 HEARING OFFICER GOLLIN: Yes.
- 9 FURTHER REDIRECT EXAMINATION
- 10 Q BY MR. FIORETTO: Were you the only one that met with
- 11 Wayne Dailey that morning to talk about switching back to days?
- 12 A No.
- 13 Q Who else was there?
- 14 A Jeffery Sobczak.
- 15 Q And, as a result of your conversation with Mr. Dailey, you
- 16 were allowed to work days, correct?
- 17 A Jeff got moved to days before me, yeah.
- 18 Q And then you did, correct?
- 19 A Yup.
- 20 Q And why did you want to move to days?
- 21 A I planned on starting a family, and I wanted to be able to
- 22 spend more time with my wife rather than -- you know.
- 23 Q Did you tell Wayne Dailey that when you met him for
- 24 breakfast?
- 25 A Yes.

- 1 that were made at Proppant?
- 2 A No, sir, I do not.
- 3 HEARING OFFICER GOLLIN: You might want to broaden your
- 4 inquiry to recordings other than tape.
- 5 MR. ANDREWS: Yes.
- 6 Q BY MR. ANDREWS: And do you have any digital-type
- 7 recordings?
- 8 A No, sir.
- 9 Q Okay.
- 10 A The only digital recordings I had were on a computer that
- 11 -- everything was erased in my divorce.
- 12 Q So, am I to understand that at one point in time you had
- 13 digital recordings on a computer of yours?
- 14 A Yes.
- 15 Q And what were those digital recordings recordings of?
- 16 A The digital recordings were used for purposes --
- 17 Q Well, what were they recordings of?
- 18 A They were recordings of conversations that I had with
- 19 Brandon Crawford.
- 20 Q Did Brandon Crawford know you were making recordings of
- 21 the conversations?
- 22 MR. FIORETTO: Objection, relevance.
- 23 HEARING OFFICER GOLLIN: It is not relevant.
- 24 Go ahead.
- 25 Q BY MR. ANDREWS: Did you tell anyone at Proppant, when you

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- 1 present at the breakfast?
- 2 A I'm not sure how many people were at the breakfast. The
- 3 conversation that Barrett and I had was a private conversation.
- 4 Q So there was no one else present?
- 5 A Nobody else could hear the conversation. I told Barrett
- 6 something that I was going to do regarding something that
- 7 happened, to protect myself.
- 8 Q But present, at the breakfast cafe or whatever this was,
- 9 how many Proppant employees were there?
- 10 A The normal group was a group of four or five of us.
- 11 Q Okay. Did you whisper in Mr. Oliver's ear?
- 12 A Yes.
- 13 Q Did Mr. Oliver tell you that he was making recordings?
- 14 A No, he did not.
- 15 Q Did you ever know that Mr. Oliver was making recordings?
- 16 A No, I did not.
- 17 Q Did any other employees ever tell you that Mr. Oliver was
- 18 making recordings?
- 19 MR. FIORETTO: Objection.
- 20 HEARING OFFICER GOLLIN: Yes, that's going to be hearsay.
- 21 Did Mr. Oliver ever ask you to make recordings?
- 22 THE WITNESS: No, sir.
- 23 HEARING OFFICER GOLLIN: Okay.
- 24 Q BY MR. ANDREWS: Were you ever aware of any other
- 25 employees of Proppant making recordings of other Proppant

C E R T I F I C A T E

This is to certify that the attached proceedings
before the NATIONAL LABOR RELATIONS BOARD, REGION THIRTY

In the Matter of:)	
)	
PROPPANT SPECIALISTS, LLC,)	
)	
Employer,)	
)	
and)	Case 30-RC-6783
)	
INTERNATIONAL UNION OF)	
OPERATING ENGINEERS,)	
LOCAL 139, AFL-CIO,)	
)	
Petitioner.)	

Date: September 1, 2011

Place: Tomah, Wisconsin

were held according to the record, and that this is the
original, complete, true and accurate transcript which has
been compared to the reporting or recording accomplished at
the hearing, that the exhibit files have been checked for
completeness and no exhibits received in evidence or in the
rejected exhibit file are missing.

Christopher Walls
Official Reporter

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